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RERUM BRITANNICARUM MEDII ÆVI SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Vous treſexcellent & treſpuiſ-
ſant prince Richard par la
grace de dieu Roy dangleterre
& de france ſeigneur dirlande
& daquitayne monſtre le vre
humble liege a vous ſil vous plaiſt Thomas
Duc de gloucestr vre connestable dangleterre
Que come pluſeurs liutiſs dedens lices darmes
ont eſte en vre Royaume dangleterre ore tard
ſi bien ou temps & pnt mondit Sr & pere vostre
auel que dieu face pardon come en vre temps &
pnt plus que ne furent long temps deuant.
Et bien eſt apparant de pluſeurs en auoir & pce
que ceſt le plus grant fait qui pourra eſtre en
armes & que a vous & vre treſexcellente maieſte
appartient la ſouueraine Juriſdicion & congnoiſ-
ſance ainſi quil ſont gouuerne par Juſtice et
equite a vre renomee honnourable & q toute
la Juſtice doit manoir & eſtre dont pce quil ya
diuerſes maniers & couſtumes eſtabliſſemens
& ordonnances en diuers pays & contrees auſſi
bien de vre ſubiection come dautres & en ceſtui
vredit Royaume na eſte mis eſtabliſſement
couſtume ne ordonnance de batailles dedens lices
darmes en vre temps & auſſi au temps de voz
nobles progeniteurs combien quilz aient eſte

Fil Edwardi
3 obyt 3
Oct 1399

Ms. Black Book of the Admiralty

in the Admiralty Registry

rder of Battel in the Court of Chivalry

by Thomas Duke of Gloucester

C

grauw salanes par la quelle cause le nauire est grandement amenty se auai̅ en est endite z conuicte par vn. il sera amercie selon la discreacon de ladmiral.

Touching the bayes portuz of rouche to parties beyond the

Item soit enquiz de tous ceulx qui amesnent bleds en ptes de par dela la mer sans licence espiale forsque a bayonne bordeauw brest et calais. ꝛc sans licẽce espiale z sauui̅ en est endite z conuicte par vn. il sera fin au roy de tant cõe la value dicelluy bled amonte pour garder z sauluer les coustumes du roy.

Lawes of Oleron.

Premierement ley fait vng hõme maistre dune nef la nef est a deux hõmes ou a trois la nef sen part du pays dont elle est z vient a bordeauw ou a la rochelle ou ailleurs z se frette pour aler en pays estranges le maistre ne puet pas vendre la nef sil na co̅mandemẽt ou procuracon des seigneurs. Mais sil a mestier de despens il puet bien mettre auc̃ des apparelz en gauge par conseil des compaignons de la nef et cest le iugy̅ en ce cas.

MONUMENTA JURIDICA.

THE BLACK BOOK OF THE ADMIRALTY.

APPENDIX.—PART III.

EDITED

BY

SIR TRAVERS TWISS, Q.C., D.C.L.

PUBLISHED BY THE AUTHORITY OF THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

VOL. III.

LONDON:
LONGMAN & Co., AND TRÜBNER & Co., PATERNOSTER ROW;
ALSO BY PARKER & Co., OXFORD;
MACMILLAN & Co., CAMBRIDGE;
A. & C. BLACK, EDINBURGH; AND A. THOM, DUBLIN.

1874.

942
G786r
ser.55
v.3

RL 235

Printed by
EYRE and SPOTTISWOODE, Her Majesty's Printers.
For Her Majesty's Stationery Office.

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INTRODUCTION.

INTRODUCTION.

The Black Book of the Admiralty, which has been lost sight of for more than half a century, has very recently come to light. It has been discovered accidentally at the bottom of a chest, which was supposed to contain private papers belonging to the late Registrar of the Admiralty Court, and which had been transferred from his private office to the cellars of the existing registry shortly after its establishment. It will sound strange to many persons who are not familiar with the history of our legal registries, to be informed, that the records of so important a court as the High Court of Admiralty of England have, until the appointment of the present Registrar, been allowed to be kept in the private office of the Registrar for the time being, and that it was at the instance of Mr. Henry Cadogan Rothery, the present Registrar, supported by the recommendation of the late judge of the High Court, the Right Hon. Dr. Lushington, that the Treasury consented to establish, for the first time, a public office where the records of the High Court are now kept. The circumstance of the Editor having made public the contents of the missing Black Book happily led to the recognition of the volume, which was beneath a mass of unimportant legal papers, and which might otherwise have escaped examination.

The discovery of the Black Book of the Admiralty puts an end to all doubt as to the mistake of Mr. Luders in supposing that he had discovered the missing Black Book amongst Selden's MSS. in the Bodleian Library at Oxford, and as to the error of M. Pardessus

in identifying upon the authority of Mr. Luders the Bodleian MS. with the Black Book. This subject has been more fully discussed by the Editor in his Introduction to the first volume of the present work. It has also now become possible to form a judgment as to the age of the Black Book itself from an inspection of the handwriting, which will be found to confirm the opinion of the Editor, that it is of a later date than either the Cotton MS. in the British Museum, or the Selden MS. in the Bodleian Library, and that Prynne is not warranted in stating that the first part of the Black Book was written in the reign of Edward III., although the contents of the three first divisions may have been drawn up during the reign of that king, and the Inquisition of Queensborough, with which the fourth division commences, was, beyond doubt, held in the forty-ninth year of his reign. There is greater difficulty in determining where the line is to be drawn between what Prynne calls the first part and the other parts of the MS., to which he assigns different ages. Competent judges have favored the Editor with their opinion that the writing throughout the MS. is by one and the same hand, and there is to be observed throughout the MS. a general identity, not merely in the form of the letters, but in the flourishes of the scribe at the end of the words, which gives strong support to this opinion. Other skilled judges, however, are disposed to see a slight difference of character and ink between the part of the MS. which terminates with the safe-conducts issued in the reign of Edward IV. and the three last treatises. The numbering of the folios of the MS. unfortunately affords no assistance, and Mr. Powles in his account of the Contents of the Black Book has led the Editor into an error by his note, that from the commencement of the treatise on the office of the constable and

[1] Introduction to Vol. i. p. xvii.

the marshall, "the folios are not marked." Mr. Powle's note, as stating a matter of fact, is perfectly correct, but it is so unguardedly worded, that the Editor was led to infer from it that the numbering of the folios was continued up to the place whence the folios were not marked, whereas it proves, on an inspection of the MS., that the numbering of the folios is not continuous, and that the numbers cease altogether in the middle of the documents connected with the Admiralty of John Holland, Duke of Exeter. For instance, the pages of the MS. are numbered consecutively from the commencement of No. A. as far as p. 78 in No. D., which corresponds to p. 173 of the printed volume. Here the numbers cease for a time, but they are resumed on p. 141 at the commencement of No. E, which contains Rowghton's Articles, and the numbering of the pages is continued to p. 191, when it breaks off abruptly in the middle of the Duke of Exeter's Admiralty, and is no more resumed. On the last page, indeed, of the MS., it is noted in four places, that there are 139 folios, and it will be found on examination that such is the actual number of the folios of the volume, upon which there is writing. The total number, however, of folios from the commencement of No. A. to the end of the last treatise is 145; but of these six are blank folios separating the various divisions of the work.

The Black Book itself, as conjectured by the Editor, supplies no information by title or note as to the sources from which the five first parts, which are distinguished respectively as No. A., No. B., No. C., the Lawes of Oleron, and No. D., were derived. It is not unreasonable to suppose that the numbers were originally endorsed on certain earlier MSS. which contained the several parts, and that corresponding distinctions have been observed in the Registrar's book. The above numbers, however, as well as the title "Lawes of Oleron," which is inserted immediately after Article XXXIX. of

No. C., have the appearance of being in a handwriting more modern than that of the text itself, although space seems to have been left by the scribe between the respective parts of the MS., so as to allow of a distinguishing title being prefixed to each part. Side notes in English have also been added on the margin of the several parts, the writing of which has a great similarity to the writing of the side notes on the margin of Selden's MS., although the substance of them is not always identical, whilst the initial letters C. H. have also been added on the margin of pages 30, 36, 143, 145, 146, 147, in a handwriting which resembles very closely the handwriting, in which the same letters have been inserted in the margin of Selden's MS. These initial letters have been considered by Selden himself to be the initials of Charles Howard, Earl of Nottingham, who succeeded Thomas, Duke of Norfolk, in the office of High Admiral. The signature of T. Norfolk, which is peculiar to the Black Book, is subscribed to the Articles of Rowghton, and likewise to the three last treatises, which are connected with the office of the High Constable and the Earl Marshall; and it may be observed that the subscription of the Duke of Norfolk is in a different character and in a lighter ink than the text of any part of the MS., excepting the last clause of the treatise, which seems to have been repeated in a more modern hand, probably at the time when the Duke of Norfolk subscribed his name to it.

The result of the Editor's examination of the Original Black Book has been to satisfy him that no part of the writing is of a period earlier than the reign of Henry VI. There can, however, be no doubt that there are documents inserted in it, which were drawn up at a period antecedent to the reign of Edward III. The Editor, for reasons stated in the introduction to the first volume of this work, has felt himself justified in referring the parts marked No. A. and No. B. to the early part of the reign

of Edward III. Part No. C., on the other hand, contains ordinances which purport to have been made in the reigns of Henry I., Richard I., King John, and Edward I. respectively, whilst immediately after the thirty-ninth article of No. C. is inserted the title "Lawes of Oleron," followed by thirty-five articles, the last of which purports to be an ordinance made at Hastings in the second year of the reign of King John, enjoining all vessels to strike their topsails on meeting any of the king's ships. The Editor has already stated at length the grounds for regarding this ordinance as authentic.

With respect to the first twenty-four articles which follow the title "Lawes of Oleron," there can be no doubt of their just claim to bear that title, but the next following ten articles are somewhat perplexing. They are peculiar to the English Admiralty, and they are inserted in the Cotton MS. and in Selden's MS., but they are not found in any independent MS. of the Laws of Oleron; on the contrary, the earliest known MS. of those laws, which has been published for the first time in the present volume, and which was in use in England in the reign of King Edward II., does not contain those articles. The form, in which the ten articles are drawn up, is significant of some peculiarity in their origin, inasmuch as there is a recital at the commencement of each article, announcing that it has been sanctioned by some legislative authority, whilst each article concludes with the usual formulary appended to the Judgments of the Sea, as if it had been thereby intended that it should be received as a continuation of those judgments. M. Pardessus has included the first eight of these additional articles in his collection of the Rolls of Oleron, but he has omitted the ninth and tenth articles, considering them to be an amplification of the twenty-fifth article of his series, which twenty-fifth article is not found in any of the English MSS.

It is not improbable that these ten additional articles

were received in England as part of the Laws of Oleron in the reign of Edward III., inasmuch as there are references to the Laws of Oleron by name in ancient documents of that reign, which seem to point to one or more of these additional articles. Thus there is a record[1] of an appeal from the Mayor's Court at Bristol in 24 Edw. III., in which judgment had been given in favour of certain merchants on their complaint that the master of a ship had neglected to keep a guard over their property, "which he was bound to do by the "Laws of Oleron;" but no such requirement is found in any of the first twenty-four articles of those laws as set out in the Black Book of the Admiralty, whereas the 30th and 31st articles may be appealed to as affirming the responsibility of the master. Again, there is a remarkable return recorded in the Black Book itself, at the inquisition held at Queensborough in 49 Edward III. The jurats, in answer to the sixteenth article of enquiry, return that "in right of lodemanage or pilotage it seemed "to them, that in that case they knew of no better "advice or remedy, but that it should be from this time "used and done as in the manner which is contained "in the Laws of Oleron," but no provision is found in the twenty-four first articles of those laws, as set out in the Black Book, for the punishment of a pilot who has failed in his duty, whereas there is ample provision made in the thirty-third and thirty-fourth articles for the indemnification of the owner of a vessel at the expense of a pilot, if she should be lost while under his charge, and for the punishment of the pilot, if she should be lost from his default.

There can be no doubt upon the evidence of two MSS. which are extant in the archives of the Guildhall of the City of London, that a version of the Judgments of the Sea, consisting of twenty-four articles, was received in

[1] Prynne's observations on Coke's Fourth Institute, p. 117.

England in the reign of Edward II., and further, that the version so received was entitled "La Chartre d'Oleroun "des Juggementz de la Meer." Both the Guildhall MSS. commence with the identical declaration, "This is a copy "of the Charter of Oleroun of the Judgments of the "Sea." The word "rolls," as the synonym of "charter" occurs for the first time in a MS. which is preserved in the Bodleian Library at Oxford, which is thus headed, "C'est la Copie des Roulles ou Chartre d'Olyroun des "Juggementz de Meer." This MS., of which the press mark is Bodley 462, is a MS. of the fourteenth century, less ancient indeed than the Liber Memorandorum of the City of London, which is the earlier of the two Guildhall MSS., but more ancient than a MS. in the Cotton Collection in the British Museum (Nero, A. VI.), in which the word "chartre" is discarded, and the first article is headed "Ceo est la copie des Roules de Oleron et des "Juggementz du Mair." It seems to be a fair inference from the heading of the two Guildhall MSS., which are the earliest known MSS. of the Judgments of the Sea, that those judgments were introduced into England at a time, when it was customary to apply the term charter [1] to laws, to which at a later period the term "rolls" came to be applied. This change of nomenclature in England dates from the reign of King John, when the practice of recording the charters of each year on rolls of parchment was introduced in the king's chancery, and it became the duty of the king's chancellor to enrol all laws. Thenceforth the laws of each year came to be spoken of as the roll of the year, or the rolls of the year in case they were too numerous to be contained in a single roll.

[1] The change of practice is said by some writers to have commenced in the reign of Richard I. It is probable that the word "Charta" equally with the word "Rotulus" was originally used in a general sense to signify "a writing," but there is no doubt that the term "Charter," as applied to laws, was in use before the term "Roll," and that the latter term was applied in England to laws after they had been enrolled.

There are grounds for believing that Richard de Marisco, the king's chancellor, in order not to displease King John, abstained from enrolling the laws signed at Runimede and the Forest Laws, and hence no roll has ever been discovered of those laws, and they have come down to us under the names respectively of "Magna Charta," and "Charta de Foresta." Whether we may safely go so far as to hold that the use of the term "charter" in the earliest MSS. of the Judgments of the Sea implies that they had been sanctioned as laws in England before the reign of King John is a delicate question, but the use of that term in the earliest MSS. of the Judgments of the Sea, coincides with the recital of the Roll, 12 Edw. III., that the Ley Olyroun, under which title the Judgments of the Sea were recognized by the king's justiciaries at that time, had been sanctioned by King Richard I. on his return from the Holy Land. One thing at least seems to be established by the title which is prefixed to the Judgments of the Sea in the Gascon version of them in the British Museum (Add. MSS. 10, 146),[1] that they were not known in the Duchy of Acquitaine under either of the titles, under which they were received in England in the fourteenth century, but were there known as "the Customs of Oleron."[2] The more that this question is examined by the light of the MSS. which the Editor has published, and which were not accessible to M. Pardessus, the more reasonable will it be found, in the Editor's opinion, to hold that the statement in the Roll 12 Edw. III. is not apocryphal, and that M. Pardessus was not warranted in his conclusion that the Judgments of the Sea do not belong to Oleron.[3]

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[1] This MS. has been published for the first time in Vol. ii. of the present work.

[2] A similar title "La Coustume "d'Olleron" is given to the Laws of Oleron in MS. Francais 5330 in the Bibliothèque Nationale in Paris.

[3] Mes conjectures, au contraire, aplanissent toutes les difficultés. Les Rôles n'appartiennent point à Oleron. Pardessus, Lois Maritimes, Tome i. p. 306.

Of the two versions of the Judgments of the Sea which are preserved in the archives of the Guildhall of the City of London, the handwriting of the MS. which is contained in the Liber Memorandorum is of a period rather earlier than that which is contained in the Liber Horn, but they exhibit many signs of having been derived from a common source, if in fact the MS. in the Liber Horn has not been copied from the MS. in the Liber Memorandorum. The grounds for holding that the former MS. is a transcript of the MS. in the Liber Memorandorum are that there are numerous omissions of words and sentences in the Liber Memorandorum which are repeated in the Liber Horn, whilst in both volumes the Laws of Oleron are immediately followed by the charter granted by William the Conqueror to the City of London in A.D. 1066, which in its turn is followed by the charter granted to the same city by King Henry I. On the other hand the spelling of the words in the Liber Horn differs generally from the spelling in the Liber Memorandorum, and there are some errors of the scribe in the Liber Memorandorum, which are not repeated in the Liber Horn. This latter circumstance, however, is not of great importance, and may be due to the fact that the scribe of the Liber Horn was a person of greater discernment than the scribe of the Liber Memorandorum, whilst the difference in the spelling, which at first gives rise to greater difficulty, may be accounted for by the probable assumption, that the MS. in the Liber Horn was written about twenty years later than the Liber Memorandorum. Uniformity of spelling is very rarely met with in ancient French MSS., of which fact the Black Book of the Admiralty is a remarkable instance, for the system of spelling throughout the early part of the Black Book is different from that which prevails in the Selden MS., which in its turn differs considerably from the system of spelling adopted by the scribe of the

Cotton MS.; yet the Admiralty ordinances which are contained in the three MSS. must have been derived from the same original rolls. A memorandum is appended at the end of the Judgments of the Sea in the Liber Memorandorum, describing the geographical position of the island of Oleron. This memorandum does not maintain the same relative place in the Liber Horn, but is inserted in the margin near the commencement of the Judgments of the Sea, whereas in MS. Rawlinson, B. 356, which is in the Bodleian Library at Oxford, this memorandum maintains its place at the end of the Judgments.

Notwithstanding the claim of the Liber Memorandorum to somewhat higher antiquity, which is clearly established by the character of the handwriting, the Editor considers that the text of the Liber Horn has a preferable claim to publication, as the more faithful representative of the earliest known version of the Judgments of the Sea, inasmuch as many of the deficiencies of the text which are common to both MSS. have been made good in the Liber Horn, and so far the text of the Liber Horn is more complete. It also deserves to be noticed that there are several readings[1] in the Liber Horn which supply words and passages which are wanting in the Black Book of the Admiralty, and that such readings are supported by the text of the Liber Memorandorum, so that there can be no doubt that there was a text of the Judgments of the Sea in use in England in the reign of Edward II., which was more correct than the text which has been incorporated into the Black Book, and it has been the object of the Editor to make that text accessible to the student of maritime law by prefixing it to the Customs of the Sea in the present volume.

The Editor has further annexed in the notes to the

[1] Those readings occur in articles x., xii., xiii., and attention has been called to them in the notes upon those articles.

text of the Judgments of the Sea, as copied from the Liber Horn, references from time to time to parallel passages in an ancient Flemish MS. of the fourteenth century, which is preserved in the public archives of the City of Bruges, and has been recently published for the first time by Professor Warnkoenig in the Appendix to his History of the Political and Juridical Institutions of Flanders.[1] This MS. was discovered by Professor Warnkoenig in 1833 in an ancient register book of documents, some of which are without any date, but the dates of others extend from A.D. 1384 to A.D. 1440.[2] The MS. is headed "This " is a copy of the Rolls of Oleron of the Judgments of " the Sea," and it is written throughout in the old Flemish tongue after a style which, according to the opinion of competent judges, was in use at the commencement of the fourteenth century. The mention, however, of the port of Sluys by name, in connection with the ports of Bordeaux and of Rochelle, and the substitution of the name of Sluys in the place of that of Bordeaux in three other articles, preclude its being assigned to a date earlier than about A.D. 1330–40, when Lambins-Vliet on the Zwyn, the harbour of Bruges and of Damme, had become famous under its newly acquired name of Sluys, and the merchants of the Duchy of Aquitaine had obtained from the Count of Flanders the privilege of having a factory at Damme (A.D. 1331). Damme was in fact fast becoming at that time the chief emporium of the trade between Gascony and Flanders, and its position on the canal which connected the estuary of the Zwyn with the city of Bruges made it a place of convenient access to the rich burghers of Bruges, and to the shipowners and shipmasters of the south of France who congregated in the port of Sluys. The latter would naturally bring with them the maritime laws by which

[1] Flandrische Staats-und-Rechts-geschichte bis zum Jahr 1305. Tübingen, 1835.

[2] Dit es de Coppie van den rollen van Oleron van den vonnesse van der Zee.

their trade was governed, and the translation of those laws into Flemish would be called for by the necessity of the maritime courts of Damme making themselves acquainted with those laws, and thus we find that in the middle of the fourteenth century a MS. translation into Flemish of those laws existed, which purported expressly to be "a copy of the Rolls of Oleron of the Judgments "of the Sea." In the next following century the same judgments were circulated in Northern Europe under the title of "The Usages of the Law Maritime at Damme "in Flanders," and they were subsequently popularised in Flanders under the title of "the Judgments of "Damme," and in Zeeland under the title of the "Laws "of Westcapell."[1] There is, however, no difficulty in recognising under those names the Judgments of the Sea in a tongue more modern than the Flemish of the Bruges MS.

There are writers, however, who have been bold enough to contend that the Judgments of Damme are the original Judgments, of which the Judgments of Oleron are a French translation. Adriaen Verwer, who published a treatise on the maritime laws of the Low Countries (Nederlants-See-Rechten) in A.D. 1711, is the stoutest champion of this theory, but the Judgments of Damme exhibit, in common with the Judgments of Oleron, many peculiarities, which proclaim them to be derived from a southern source. For instance, the ton, which was the measure of a vessel's capacity in the south of France, is used throughout the Judgments of Damme, whereas the last was the measure of a vessel's capacity in use in Flanders. Again, the interval of time allowed as "lay-days" for a chartered vessel in the Judgments of Damme

[1] A MS. of the same judgments entitled "Extracts from the Laws "Maritime, which were of custom "observed at Westcapell," has supplied Boxhorn with the text which he has published in his Chronicle of Zeeland as "The Laws "of Westcapell." Van Leewen has published in his Batavia Illustrata a more ancient text of the same judgments under a similar title.

is spoken of as fifteen days corresponding to the "quinzaine" in use in France, whereas the corresponding interval of time allowed for "lay-days" in the usages of Amsterdam, Enchuysen, and Stavern, and also in the Maritime Law of Wisby is "fourteen days," the fortnight of English usage. One more instance may be mentioned as regards the payments to be made for harbour pilots. Provision is made for vessels sailing from Bordeaux and Rochelle to Flanders, and for vessels sailing from the same two ports to England or to Scotland, but no provision is made for vessels sailing from any other ports to Flanders, nor for vessels sailing from Flanders to England or to Scotland. It would be difficult, however, on the hypothesis of the Judgments of Oleron being derived from a northern source, to account for provisions being made in them respecting the employment of harbour pilots in voyages from Bordeaux to England and Scotland, and for their silence as to the employment of such pilots in voyages from Bordeaux to Flanders, or in voyages from Flanders to England and Scotland. Mr. Pardessus has sifted this question very carefully, and he agrees with Professor Schlegel in his opinion, that the Maritime Laws of Damme have their source in the Judgments of Oleron, more particularly as the commerce of Damme [1] with Bordeaux, prior to A.D. 1330, was not of that importance which would have given occasion for those Judgments, the existence of which, prior to that time, is placed beyond all dispute.

The discovery of the MS. of the Rolls of Oleron at Bruges may be said to put out of court the advocates of another theory, viz., that "the Maritime Law of Wisby" is the most ancient compilation of medieval maritime law

[1] The seal of the city of Damme appended to a charter of A.D. 1328 exhibits one of the earliest representations of a ship fitted with a modern rudder. It is figured in Jal's Archæologie Navale, T. ii. p. 367.

in Europe,[1] and that the Rolls of Oleron are an early French translation of a portion of that compilation. This theory has been maintained by many writers of eminence, amongst whom may be mentioned Langenbeck,[2] Kuricke,[3] Arpe,[4] and Brokes.[5] The grounds on which this theory rests may be thus stated. In the first place, the provisions of the Rolls of Oleron are almost identical with the provisions of certain articles of the Maritime Law of Wisby; and secondly, there is historical evidence of maritime laws having been drawn up at Wisby in the early part of the fourteenth century. Both of these grounds, examined by the light of modern discoveries, will be found to fail the advocates of this theory; but it must be borne in mind by the reader, in justice to the various eminent jurists who have supported it, that they were misled by Cleirac's edition of the Rolls of Oleron to misapprehend the true character of the original version of the Rolls, and that the discussions of learned men in the seventeenth and eighteenth centuries, as to the relative antiquity of the Rolls of Oleron and other compilations of maritime law, proceed upon the assumption that Cleirac's work on "Les Us et Coutumes de la Mer" contains the original version of the Rolls, the contrary of which may be now regarded as an established fact.

The confutation of this theory is not very difficult, as far as it rests on the identity of the Rolls of Oleron with certain articles of the Maritime Law of Wisby, inasmuch as it will be found that the latter articles are identical with the Judgments of Damme, and that in the few minor points in which they differ from the early English

[1] The authority of Grotius (Florum Sparsio, p. 141) has been improperly invoked in support of the theory, that the maritime law of Wisby is the most ancient body of medieval maritime law.

[2] Anmerkungen uber das Hamburgische Schiff-und-See-Recht. Enleitung.

[3] Jus Maritimum Hanseaticum, p. 71, Hamburgi, 1667.

[4] Feriæ Œstivales, p. 266.

[5] Observationes Forenses. Præf., p. iv.

MSS. of the Rolls of Oleron, they agree with the Bruges MS., which avowedly purports to be a copy of the Rolls of Oleron. This confutation is the more complete, when the true character of the Maritime Law of Wisby is taken into consideration. The Maritime Law of Wisby did not originally pass under that name, but under the name of "the Supreme Maritime Law" (Hogeste Water-Recht), and it is so entitled in the earliest printed edition of it, which was published at Copenhagen in A.D. 1505. This edition consists of sixty-six articles written in low German, and it is readily divisible into three distinct parts. The first part consists of fourteen articles, which are totally silent as to Wisby, but they occasionally allude to rivers and places in the immediate neighbourhood of Lubeck, and their contents are identical with the contents of certain articles in the ancient codes of the city of Lubeck. The next twenty-five articles are identical with the version of the Rolls of Oleron, which was received, as above mentioned, in Flanders in the fourteenth century, with the exception that the fifteenth article of the Flemish version of the Rolls is divided into two articles "in the Supreme Maritime Law," and so gives rise to a twenty-fifth article. The localities referred to in these twenty-five articles are the same with those referred to in the Bruges MS., the port of Sluys being the chief port which figures in connexion with the ports of Bordeaux and of Rochelle. The only variation from the Flemish text is not a very happy one, as it consists in the substitution of the name of "Copenhagen" for that of Bordeaux in the article, which treats of harbour pilots on the coasts of Brittany and of Normandy. This part is also silent as to Wisby, and the same may be said of the remaining twenty-five articles, which make up the third part. These last articles, with the exception of the concluding article which is conformable to an article in the ancient codes of Lubeck, treat of vessels arriving in the ports and waters of Holland, and refer to the channels of the Flie and of the Marsdiep as those, which

vessels starting on a voyage or coming off a voyage would pass through, and one of these articles (the sixty-first) makes allusion to a port within the entrances of the Flie and of the Marsdiep, as the port in which a particular usage prevailed, which is recited in that article. The complete conformity of these articles to certain articles in the collection of Dutch maritime customs, known as the Usages of Amsterdam, which were identical with the usages of the ports of Enchuysen and Stavern on the Zuyder Zee, places beyond dispute the Dutch origin of these articles, which is confirmed by other circumstances.

M. Pardessus states that he was unable to discover any traces of the ancient Book of Customs (Keur-book) which was formerly preserved in the archives of the city of Amsterdam, but he was fortunate enough to obtain access to a MS. [Dreyer No. 65] which is preserved in the archives of the city of Lubeck, and is of the date of A.D. 1533. This MS. contains a text of "the Supreme Maritime Law" apparently copied from a MS. differing in an important particular from the MS., from which the edition of A.D. 1505 was printed at Copenhagen. The edition of A.D. 1505 has the following rubric prefixed to the fortieth article: "This is the ordinance which the "community of shipowners and of merchants made "amongst themselves on ship-law."[1]

The Lubeck MS., on the other hand, has this rubric prefixed to the corresponding article of its series. "This "is the Ordinance, which the community of shipowners "and of merchants made amongst themselves on ship "law, which the men of Zeeland, Holland, Flanders "observed and with the Law of Wisby, which is the "oldest sea-law."[2] It would appear from this rubric

[1] Dit es de Ordinancie, de de gemene Schipperen unde Koplüde myt malkander begerende van Schiprechte.

[2] Dytth iis ordinantzie, de de gemeyne Schyplude unde Koplude myth malkanderen begerende van schyprechte, dat men in Szelant, Hollant, Vlanderen, holdende syn unde myt Witbwrechte, dat is dat oldeste waterrechte.

that the compiler of the Lubeck MS. not merely considered the laws which followed it to be identical with the laws observed by the men of Zeeland, Holland, and Flanders, but that the Law of Wisby, which was the oldest maritime law, was something different from them. The question which at once suggests itself upon this interpretation of the Lubeck rubric is, whether there existed at that time any body of law on maritime matters, which passed under the name of "the Law of Wisby," and which was distinguishable from "the Supreme Maritime Law," now generally received under the title of "The Maritime Law of Wisby."

The writers who have advocated the claim of the compilation known originally as the Supreme Maritime Law (Hogeste Water-Recht) to be regarded as the most ancient body of maritime law in Europe, have not sufficiently distinguished between that compilation and another body of laws on maritime matters, which were peculiar to Wisby, and which are contained in a code entitled "Wisby Stadt-Lag." The precise time at which this code was compiled is a matter of dispute. Professor Schildener, of Griefswald, in the introduction to his edition of the Laws of Gothland, published in 1818, refers it to the thirteenth century, but it is generally supposed to have been compiled under the auspices of Magnus Erikson, King of Sweden and of Norway, sometime after A.D. 1320; it is possible, however, that the code was compiled at an earlier period and that it was promulgated formally after Magnus had succeeded to the throne of Sweden in 1319–1320. This code contains various laws on maritime matters, and may well be the Law of Wisby referred to in the Lubeck MS. as the oldest maritime law. This is the more probable, for the body of laws of which Leibnitz speaks as having great authority in the Baltic Sea, like the Laws of Oleron in the European ocean, was undoubtedly the "Wisby Stadt-Lag;" inasmuch as Leibnitz describes those Laws

as originally written in the Saxon dialect of the German language, and as having been published by John Hadorph with the other laws of the island of Gothland, whereas in the collection of laws published by John Hadorph in 1676–1689 the only laws which correspond with the description given of the Wisby Sea Laws by Leibnitz is the code entitled Wisby Stadz-Lag på Gothland,[1] written in Low German, and of which the preamble corresponds with the preface of the laws, which Leibnitz has recited in his work. Other Laws of Gothland form part of the same collection, which includes a Swedish translation of "the Supreme "Maritime Law" from the pen of Hadorph himself.

This hypothesis does not give rise to any difficulty in accounting for the collection of sea laws, originally entitled "The Supreme Maritime Law," having acquired in course of time the title of the Maritime Law of Wisby. The Supreme Maritime Law was, as already stated, printed for the first time at Copenhagen in 1505, and that edition was without doubt soon put into circulation in the ports of the Baltic. No editor's name vouches for the authenticity of the work, but at the end of the collection of laws there is the following colophon: "Here ends the "Maritime Law of Gothland, which the community of "merchants and shipowners have ordered and made at "Wisby, so that all men may conform to it," followed by the announcement, "Printed at Copenhagen in the "year of our Lord 1505."[2] There is no information forthcoming in any part of the volume as to the personality of the editor or of the printer, but below the final colophon comes a shield of arms, which was used to denote the books issued from the press of Gotfried de

[1] That is, the laws of the town of Wisby in Gothland.

[2] Hyr eyndet dat Gotlansche water-recht, dat de gemeyne kopman vnn schippers geordineret vnn ghemaket hebben to Wisby, dat sik alle man hyr na richten mach. Gedrucket to Koppenhaven, Anno Domini M.D.V.

Gemen, the earliest printer at Copenhagen. It is not improbable that the editor of the work inserted the words "at Wisby" in the final colophon in good faith, intending thereby to make known from what source he had obtained his copy of the Sea-laws of Gothland. On the other hand, he may have inserted those words with a view to recommend the work to his Danish readers, as he has certainly altered the text of the original laws in two places [1] apparently with that object.

Another erroneous opinion respecting the origin of the Judgments of the Sea has been already noticed by the Editor in his Introduction to the Second Volume, p. lix. Mr. Hallam has described them "as a set of regulations "chiefly borrowed from the Consulate, which were com- "piled in France during the reign of Louis IX. and "prevailed in their own country." Mr. Hallam was probably misled to make this statement by his reliance on the authority of Professor Boucher, whose work he cites for other purposes connected with the Consulate of the Sea. Professor Boucher, in his French translation of the Consulate published in 1808, writes thus, "Les "Jugemens d'Oleron ne sont autre chose qu'un recueil "de Jugemens, dont les bases sont prises dans le Con- "sulat de la Mer, mais modifiées en raison des localités, "et ont paru vers l'an 1266 en Oleron." Nothing can be more easy than to hazard such an assertion, when the text of the Consulate of the Sea is not accessible to the reader, for Boucher's so-called translation of the Consulate is a paraphrase rather than a translation of the original Catalan text of the Consulate, and it would be idle for the reader to refer to it for the purpose of mastering the contents of the Consulate and thereby enabling himself to test the accuracy of Boucher's assertion; yet Boucher's work has obtained a consider-

[1] By substituting "Copenhagen" for "Bordeaux," in art. 27, and the word "Danish" for "Amsterdam" in art. 48.

able circulation in foreign countries out of all proportion to the success, which attended its publication in France.

Very little appears to have been known in England at the commencement of the present century outside the precincts of the College of Advocates in Doctors Commons respecting the text of the Consulate of the Sea. Mr. Abbott, subsequently Lord Tenderden and Chief Justice, in the preface to the first edition of his well-known work on Shipping (25 Feb. 1802), laments, that he had never been able to meet with a copy of the Consulate itself, and that he had been obliged to make quotations from it at second hand on the faith of other writers. An English translation of two important chapters of the Consulate connected with the Law of Prize was published by Dr. Christopher Robinson, a member of the College of Advocates, in 1801, from the Italian version of the Consulate, which had been reprinted at Venice in 1737, with a commentary by Giuseppe Maria Casaregis. This version would appear to have been the version of the Consulate, to which Lord Stowell referred in 1798 in his judgment in the Aquila, 1 Ch. Rob., p. 44, and again in 1810 in the Ceylon, 1 Dodson, p. 110. On the other hand, Lord Mansfield, in his celebrated judgment in the case of Luke v. Lyde, 2 Burrows, p. 289 (A.D. 1776), which was the commencement of a new epoch in the history of English maritime jurisprudence, cites the Consolato del Mare as a Spanish book, from which it may be inferred that he was correctly informed as to the original character of the work, although from the title, under which he has cited it, he had evidently before him an Italian version of it. Both of the great judges above mentioned treat the Consulate of the Sea as a most valuable body of maritime law, which had been commonly received in Europe and which was at the same time conformable to reason and to equity. Chancellor Kent in a similar manner, in his Commentaries on American Law (Vol. III., p. 10), describes the

Consolato del Mare as containing the common law of all the commercial powers of Europe, and as the most authentic and most venerable monument extant of the commercial usages of the middle ages. He observes, also, that it has been translated into the Castilian, Italian, German, and French languages, and goes on to say that "an entire translation of it into English has "long been desired and called for by those scholars and "lawyers, who were the most competent to judge of its "value." The Editor has long pondered over these words of Chancellor Kent, and has often felt disposed to undertake the task of translating the original text of the Consulate of the Sea into English, but he has shrunk from the task as too arduous from the difficulty of procuring an early edition of the Consulate of the Sea in the original Catalan tongue, and from the want of the necessary leisure to prepare a fair translation of it. Circumstances, however, have enabled him to surmount both these difficulties, and his labours have been much lightened by the facility of studying for the purposes of translation the Catalan text of the "Consolat del Mar" in the excellent edition of it, which has been published by M. Pardessus in his Lois Maritimes (Tom. ii., p. 49). The Editor would otherwise have been obliged to have recourse on all occasions to the Editio Princeps of the Consolat del Mar, published in Barcelona in 1494, which is extant in the National Library of Paris,[1] and which is the only copy of that edition known to him, for neither of the two Catalan MSS. which are preserved in that library, and with which the Editor has collated the text of the present work, contains a text which

[1] The only Catalan version of the Consulate of the Sea, which exists in the British Museum, is an edition printed at Barcelona in 1627. The National Library at Paris possesses both the Editio Princeps of 1494 and the edition of 1502, the latter of which Capmany erroneously believed to be the earliest edition.

deserves to supersede that which was adopted by Celelles in his edition of 1494.

The nationality of the Consulate of the Sea has since the commencement of the seventeenth century furnished almost as interesting a battle field for disputants as the nationality of the Homeric poems. Barcelona, Pisa, and Marseilles have each put forth a claim to its authorship, or at least have been pressed forward by eminent writers as claimants for that distinction. The Abbé Gaetano, a native of Pisa, may be regarded as the originator of the claim on behalf of Pisa, and a passage in his notes on the Life of Pope Gelasius II., which he published at the commencement of the seventeenth century, and which has been handed down to his countrymen in the Annals of Muratori,[1] gave the first impulse to this claim. The statement of Gaetano is to the effect "that in the non-existence of any laws of "the sea the Pisans drew up in the latter part of the "eleventh century a body of maritime regulations, which "they first of all submitted to the approval of Pope "Gregory VII., in the Church of St. John Lateran at "Rome, on the Kalends of March A.D. 1075, and which "the Roman people swore to observe in that year; that "subsequently the Pisans themselves swore to observe "the same body of maritime regulations first of all in "the island of Majorca in A.D. 1115, and afterwards in "the city of Pisa in A.D. 1118. That these Regulations "were in a short time accepted as laws of the sea by all "the princes and peoples both of the east and of the "west, and were translated into almost all the languages "of civilised Europe." Gaetano has appealed to no State document and has cited no annalist in support of this statement, although the event, which he has described, is represented to have happened four centuries before his time; but his statement has been adopted by various

[1] Rerum Italicarum Scriptores, T. iii. pars i. p. 402.

learned Italian publicists, amongst whom may be named Valeschi in his treatise on the Ancient Constitutions of the City of Pisa, the advocate Iorio in his preface to the Code of King Ferdinand, and Baldasseroni in his Dissertation on the necessity of compiling a Code of Commercial Law; and to these may be added Azuni in his Code of Maritime Law, and Lampredi in his work on the Commerce of Neutrals.

Unfortunately, however, for the authenticity of Gaetano's statement it is in direct conflict with certain historical facts, respecting which there can be no reasonable dispute. The system of law, under which the Republic of Pisa flourished during the eleventh and twelfth centuries, can be ascertained from public records which are still in existence; and although the laws of Pisa have never been printed, owing perhaps to the circumstance that the Republic lost its independence before the art of printing was matured, there can be no doubt of the authenticity of the laws, which are preserved in certain MSS. which exist in the archives of the Chancery of the Commune of Pisa. For instance, the most ancient of these MSS., which is numbered 1342 in the section of Libri Legali, bears on its first page the title "Statuta Pisanæ Civitatis." Beneath this title there has been added in a more modern hand of a cursive character, "Il presente libro e l'originale degli Statuti Vecchi "della Citta di Pisa fatti nell' anno 1161." This MS. contains two distinct bodies of law, the first entitled Constitutum Legis, consisting of forty-nine chapters, the second entitled Constitutum Usûs, consisting of an equal number of chapters. These two bodies of law make up the Statuti Vecchi. Their history is briefly told in the preamble of the Constitutum Usûs, which sets forth that the system of law, which was at that time in force within the Republic of Pisa, consisted of the Lex Romana and certain traditions of the Lex Longobarda coupled with a body of unwritten Customs, which had

been sanctioned from time to time by annual magistrates termed "provisores," whose office it was to provide for the administration of justice on principles of equity in all new cases, which might arise from time to time between Pisan citizens, or between Pisan and foreign merchants; that the decisions of these magistrates had varied from time to time and had given rise to a new body of unwritten law, which had been hitherto handed down orally, and that this was now to be reduced into writing, and to be divided into two bodies of law, the first containing the judicial decisions which had modified or amended the written Roman or Lombard Law, which was to be distinguished by the title of the Constitutum Legis, the second embodying the Customs and Usages on subjects for which the written law made no provision, and which latter body of usages was to be entitled the Constitutum Usûs. There can be no dispute as to the time at which the "Statuti Vecchi" were drawn up, as the date is recited in the concluding paragraph of the preamble of the Constitutum Usûs, namely, "Anno "incarnationis Domini MCLXI. indictione nona, pridie "kalendas Januarii." This date, it may be observed, is forty-three years subsequent to the time, when the Abbé Gaetano states that the Pisans solemnly adopted the regulations of the Consulate of the Sea as the maritime laws of the Republic. Two facts also deserve to be noted, first that the Constitutum Usûs makes no mention of the Consulate of the Sea, and secondly that the Constitutum Usûs contains provisions in regard to the affreightment of ships, the wages of mariners, the rights of part-owners, mandates and commissions, freight, jetison, salvage, and collisions, which are at variance with the provisions of the Consulate of the Sea in similar matters. Further it appears to have been the practice at Pisa for the Consuls of the Sea, whose office is recognised in chapter V. of the Constitutum Usûs, on their admission to office to swear, that in the administration of justice

in mercantile and maritime matters they would observe the Constitutum Usûs Civitatis Pisarum, and where that did not apply, they would decide according to the custom of merchants "secundum bonum usum mercan-" tiæ," but no mention is made of the Consulate of the Sea in any form of consular oath which has been preserved, or in any of the consular briefs or manuals, in which it was customary to set out minutely the rules and forms to be observed by the Consuls of the Sea at Pisa. Other documents might be cited to show that in the twelfth and thirteenth centuries the Republic of Pisa had its own system of maritime law administered by its Consuls, which differed in many respects from the Consulate of the Sea, and which the Pisans continued to observe as long as they retained their independence. The source from which the Abbé Gaetano derived his statement will be discussed hereafter; but two facts are historically certain, that the Pisans had their own maritime customs in A.D. 1081, as in that year the Emperor Henry IV.[1] swore to observe them; and secondly, that those customs were not authoritatively reduced into writing before A.D. 1161; neither of which facts can be reconciled with the statement of the learned Abbé as to the Pisans having sworn to observe the Consulate of the Sea first of all in Majorca in 1115, and subsequently at Pisa in 1118, and that before such time they had no maritime laws.

The version of the Consulate of the Sea, which was in general circulation in Europe at the time when the Abbé Gaetano wrote his notes on the life of his kinsman Pope Gelasius II., was the Italian version, which had been printed in Venice in A.D. 1549. It was through this

[1] The diploma of the Emperor Henry IV. is cited in Muratori's annals, Diss. xlv., Tom. iv., col. 19. in which are the remarkable words, Constitutiones, quas habent de mari, sic iis observabimus, sicut illorum est consuetudo.

version that the knowledge of the Consulate of the Sea, was diffused over the North of Europe in the sixteenth and seventeenth centuries, and it had come to be regarded by the northern nations as the original version, until Westerven published his Dutch translation of the Italian version in A.D. 1704, and annexed to it notes calling attention from time to time to the readings in the original Catalan version. On the other hand the advocates of the Italian origin of the Consulate of the Sea, have been accustomed to maintain that the Catalan version is a translation from the original Italian. Such a theory, however, cannot any longer be maintained with plausibility in face of the facts at present placed beyond dispute, namely that there exists in the National Library in Paris a MS. of the Consulate of the Sea in the Catalan tongue, and in a handwriting and dialect of the latter part of the fourteenth century, and that whereas the earliest version of the Consulate of the Sea in the Italian language was printed at Venice in A.D. 1539, there had been as many as four editions of the Catalan version printed at Barcelona prior to that time, namely in the years 1494, 1502, 1517, and 1523.

The theory in favour of Marseilles being the birth place of the Consulate of the Sea is equally in conflict with historical facts. The argument is of a general character and may be thus stated. "The Republic of "Marseilles in the later years of the Roman Empire was "the most flourishing seaport on the coast of the Medi- "terranean, and it had from a very early period a body "of sea laws framed after the Rhodian sea laws. The re- "public was conquered by the Franks in the fifth century, "but was allowed to remain in the enjoyment of its own "laws. It retained its sea laws, and made additions and "amendments to them as circumstances required, and "those laws were ultimately collected into one body in the "twelfth or thirteenth century, and subsequently acquired "the name of the Consulate of the Sea, from their being

" generally received and administered as law by the " Consuls of the Sea at Marseilles, and in the other great " trading cities of the Mediterranean. The circumstance, " that the earliest known version of these laws is in a " dialect of the Romance language, raises no obstacle in " the way of this theory, as the language spoken at Mar- " seilles was a dialect of the Romance language." Such is the argument. Unfortunately, however, for this theory there are MSS. records of the law, which was in use at Marseilles in maritime matters in the thirteenth century, preserved in the National Library at Paris, which cannot be reconciled with it. It appears that Marseilles after its conquest by the Franks in the fifth century came under the supremacy of one or other of the neighbouring lords during a period of nearly eight centuries, when it recovered for a short time its independence only to become subject again to the Counts of Anjou. But during the short interval of its independence the Syndics of the city of Marseilles gave authority to a Commission of Jurists to make a compilation of its ancient laws and customs. Fragments of the laws which were then compiled (A.D. 1253-55) are still preserved in the MSS. above mentioned.[1] They are drawn up in Latin and contain several chapters on maritime matters. On examining those chapters it will be found that there are some provisions in them, which harmonise with those of the Consulate of the Sea, but the majority of them have nothing in common with the Consulate, and the provisions on the subject of contribution in cases of jetison, which may be regarded as a crucial test of the diversity of origin of any two systems of maritime law, are conform-

[1] There is reason to believe that the earliest of the two MSS. in the National Library of Paris was written before A.D. 1257, inasmuch as it speaks of the banner of the Commune of Marseilles, whereas the later MS. speaks of the banner of the Lord Count. Marseilles became subject to Charles, Count of Anjou, under a treaty concluded on 4 June, A.D. 1257.

able to those of the Rolls of Oleron, and differ both from the Roman Law and from the Consulate of the Sea. There are also various chapters which refer to ancient statutes, but none which refer to any Customs of the Sea. The argument from the language in which the earliest known version of the Consulate of the Sea is drawn up, also fails, inasmuch as the earliest known MS. of the Consulate of the Sea is drawn up in the peculiar dialect which was spoken at Barcelona in the fourteenth century when the MS. was written, and there are well known distinctions between the Catalan and the Provencal dialects of the Romance language, which forbid us to assume that the dialects spoken at Barcelona and at Marseilles in the thirteenth and fourteenth centuries were identical.

The arguments in favour of the Catalan origin of the Consulate of the Sea, are in the Editor's opinion overwhelming. There is in the first place a MS. of the Consulate of the Sea in the National Library in Paris, which is probably a century older than the first known printed book of the Consulate of the Sea, and this MS. is written in a contemporary Catalan dialect. Secondly, the earliest extant printed book of the Consulate of the Sea is in the Catalan tongue, and was published at Barcelona in A.D. 1494, and there is good reason to believe that an earlier edition, also published in Barcelona, was in existence in the latter part of the last century.[1] Thirdly, the earliest mention of the Consulate is found in an ordinance of the magistrates of Barcelona on the Police of the Seas issued in A.D. 1435.[2] Fourthly, there

[1] Capmany, in the preliminary discourse to his Codigo de las Costumbres Maritimas states, that he had once in his hands for a short time a printed copy of the Book of the Consulate in the Catalan tongue, of which the type was semi-gothic, and which for reasons stated by him at length he believed to have been printed prior to A.D. 1484.

[2] This ordinance has been printed by Capmany in his Memorias Historicas, t. ii. p. 423, and by M. Pardessus in his Lois Maritimes. t. v. p. 487.

is reason to believe that prior to the circulation of these laws in the printed Book of the Consulate of the Sea they were received in most of the maritime towns of the Mediterranean under the title of the Laws of Barcelona.[1] Fifthly, there are extant four editions printed at Barcelona in 1494, 1502, 1517, and 1523 respectively prior to the appearance of any version of the Consulate of the Sea in the Italian language. Such a version appeared for the first time at Venice in 1539, of which an unique edition has lately been discovered in the Public Library in Genoa, but the text of this version differs considerably from the Catalan version of A.D. 1494, and the editor of that edition appears to have become soon aware of its imperfections, as within ten years after its publication the same editor, Jean Baptista Pedrezano, published an amended version of the Consulate of the Sea from the same press at Venice, which is in complete agreement with the Catalan version of 1494. It is this edition of 1549 which became the standard edition of the Consulate of the Sea in Italy and amongst the northern nations of Europe, until it was superseded by an edition published at Lucca in 1720, with a commentary by Casaregis, which is the edition generally used in England.

It has been suggested by the Editor in the introduction to the second volume of the present work, that the Book of the Consulate of the Sea is to be regarded as a book originally drawn up for the use of the Consuls of the Sea at Barcelona in the same way, as the Black Book of the Admiralty was drawn up for the use of the judge of the High Court of Admiralty in England. Such a MS. of

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[1] Girolamo Paulo in his account of Barcelona, composed about A.D. 1491, writes, Ædilitiæ sunt et mercatoriæ leges, per has judicium ex bono et æquo et sub compendio redditur ab duumviris, qui consules appellantur, unde consulares leges dictæ sunt; quarum hac tempestate non in ea urbe modo usus viget, sed per cunctas ferme maritimas civitates nauticæ et mercatorum controversiæ hujusmodi legibus, vel ex his depromptis, summa cum auctoritate terminantur; utque Rhodias olim, ita plerique nunc per orbem Barcinonias leges appellant.

the Book of the Consulate of the Sea has in fact been preserved in the National Library in Paris, which is in a handwriting of the fifteenth century, and at the end of which is a memorandum in the handwriting of the scribe of the Consular Court at Barcelona verifying its contents. That manuscripts of a similar character must have been accessible for reference at Barcelona and elsewhere within the dominions of the kings of Aragon prior to the publication of the printed Book of the Consulate in 1494, seems to be a necessary inference from the language of the Ordinance of the Magistrates of Barcelona of A.D. 1435, already mentioned, in several articles of which reference is made to the Consulate of the Sea as containing a more complete exposition of the law. The circumstance also, that the regulations originally drawn up for the Courts of the Consuls of the Sea at Valencia had during the fourteenth century been extended to other Consular Courts within the dominions of the kings of Aragon, must have rendered it necessary for the judges of those courts to have at hand some authentic collection of "the Customs of the Sea," as they were required by those regulations to conform their judgments to "the "written Customs of the Sea." Under these circumstances, if collections of the Customs of the Sea come to be made for the use of the Consuls of the Sea in various seaports within the dominions of the kings of Aragon, it would not be surprising to find prefixed to such Customs of the Sea copies of the Valencian regulations, which enjoined the observance of those Customs, and which gave to the Consuls jurisdiction over all contracts treated of in those Customs.[1] Such may be presumed to have been the origin of the earliest of the two Catalan MSS. which are preserved in the National Library in Paris,

[1] The twenty-second chapter of the Valencian regulations defines the subject matter of the jurisdiction of the Consuls. It is generally cited as the twenty-second chapter of the Book of the Consulate.

although it contains no memorandum of a like character with that which is found at the end of the later of the two MSS.

These two MSS. were formerly distinguished by the press marks "Fonds Cange, No. 114," and "Anc. Fonds, "No. 7805." The former is described in M. Ulloa's Catalogue of Spanish MSS. in the Bibliothèque du Roi as "No 103, Usatges de la Mer," the latter as "No. 121, "Usatges de la Mer en Catalan." They are now respectively distinguished by the press marks "Espagnol 124," and "Espagnol 56," and are so described by the Editor in the notes appended to the text of the Customs of the Sea in the present volume.

The earliest of the two MSS., namely, Espagnol 124, is incomparably superior to Espagnol 56. It is written in double columns, for the most part on paper of the fourteenth century, and in a hand of that period. The paper of that part of the MS. which immediately precedes the Valencian Regulations, is different from the paper of the first seven leaves of the MS., being thinner, and having a different watermark. The Valencian Regulations and the Customs of the Sea are on paper of the fourteenth century, which has the same watermark throughout both treatises, namely, a small circle vertically superposed upon another circle of equal dimensions, connected by a straight line drawn vertically through them. The chapters on Cruizers of War are continued on the same kind of paper as far as the fifth leaf inclusive, when paper of the fifteenth century is introduced, with a different watermark, and is continued to the end of the volume. The handwriting of these later chapters is also of the fifteenth century. The same observation applies to the remaining portion of the MS., which is in the same ink, and is apparently written by the same hand as the chapters in Cruizers of War.

The contents of this MS. readily resolve themselves into six parts. The first consists of ten folios, recently

numbered with Arabic numerals. It contains the rubrics of the third, fourth, fifth, and sixth parts. The second part consists of five folios recently numbered in the same manner, containing a civil Custom of Barcelona on Urbane Servitudes, for the introduction of which into a collection of maritime customs and ordinances no reason is given; but it may be accounted for on the supposition that the consuls of the sea at Barcelona exercised a jurisdiction in certain questions of easements as regarded buildings on the Strand of Barcelona.[1] The paper of this part of the MS. differs from that which follows, being thinner, and having a different watermark. The third part is on paper of the fourteenth century, and consists of eight folios, also recently numbered. The fourth part is on similar paper, having the same watermark as the preceding part, namely, two small circles touching each other with a straight line drawn vertically through them both. This part has the folios numbered with Roman numerals, and the numbers, which are in a hand more modern than the text, are continued to the end of the volume. It contains the Customs of the Sea, preceded by two chapters on the measurement of ships trading with Alexandria, each of which chapters has the same rubric prefixed to it, viz., "De multiplicament de "quintaladas." The Customs of the Sea commence on the back of the first folio of this part of the rubric, "Dels bons stabliments e costumes de la Mar," and they are divided into two hundred and fifty-nine chapters, distinguished by rubrics, but not numbered. They conclude on the back of folio 148, near the top of the page with the colophon "Ffinit es lo libre e acabat. Gloria

[1] The insertion of this custom on a subject, which appertained to the jurisdiction of the Œdiles under the Roman law, coincides curiously with the description given by Jerome Paul in 1491 of the Consular Laws at Barcelona: "Œdilitiæ sunt "et mercatoriæ leges; per has ju- "dicium ex bono et æquo et sub "compendio redditur ab duumviris "qui consules appellantur, unde "consulares leges dictæ sunt."

" e laor sia dada a Jesu Christ. Amen." The fifth part commences on the face of folio 149, with the heading, " Aci parla des naus armadas e de les galeas e de les sage-" ties com deven partir ne com deven pagar a aquells " qui ab elles hiran." There is no catchword at the bottom of folio 148 to indicate that the fifth part is to be regarded as a continuation of the fourth part. The fifth part terminates on the back of folio 164, with a colophon " Ffinito libro sit laus gloria Christo." The next folio is blank, after which the sixth and last part commences on the face of folio 166, in the same ink and in the same handwriting as the preceding part, with a document headed, " Aci comencen los usatges de Barchinona," and it concludes on folio 188 with an Ordinance of the Magistrates of Barcelona on the subject of Maritime Assurance of A.D. 1486. This sixth and last part, although the contents of it do not profess to be of general interest, contains a document, which has been made a subject of worldwide discussion, and upon which has been built up the theory which refers the Consulate of the Sea to the eleventh century, and gives it priority over the Judgments of the Sea. The recitals of this document will be more fitly discussed after considering the contents of a corresponding document, which was published in the printed book of the Consulate of 1494, and has been circulated with every translation of that work, as a voucher of the high antiquity of the Customs of the Sea and of the general observance of them throughout Christendom.

The more recent of the two MSS. in the National Library in Paris, which is now distinguished by the press mark, Espagnol 56, is a MS. of the fifteenth century, on paper which has one and the same watermark, two arrows crossed within a circle, as far as folio 132, when paper with a different water-mark is introduced and is continued to the end of the volume. A paragraph on the face of folio 139, which is the last leaf, contains

the following certificate: "Ego petrus thome notarius "publicus Barchinone et curie dicti consulatus scriba "hic manu aliena me subscribi feci, et in testimonium "premissorum hic meum feci apponere signum." On the back of this folio an Ordinance of the Magistrates of Barcelona on the subject of Maritime Assurance of A.D. 1458 has been commenced in a hand of the latter part of the fifteenth century, but it breaks off at the bottom of the folio. There is a presumption, however, that the text of this Ordinance was contained on some folios which are missing, inasmuch as the table of contents prefixed to the volume supplies information as to the contents of seven missing folios. A note has also been added on the last folio, where the text breaks off in a modern hand, to this effect, "Manque sept feuillets "des Ordinances des Asseurtes en vingt huit articles "repetorisez en l'Indice mis en teste deu volume, les- "quels se peuvent suppléer de l'edition Cathalane de "Barcelona in 4to del an 1523 ou les dites ordinances "sont inserées au long." Whether or not this ordinance is to be found in the edition of the Book of the Consulate printed in Barcelona in 1523, the Editor has been unable to ascertain by a personal inspection of that edition, but a Barcelonese Ordinance on Maritime Assurance of A.D. 1458, consisting of twenty-two articles, has been printed by Capmany in his Memorias Historicas, c. 11, p. 449, which is probably the Ordinance in question, although there are reasons for believing that Capmany's text of the Ordinance is somewhat imperfect.

The chapters on Cruizers of War in this MS., which is written in double columns, terminate in the second column on the reverse side of folio 158 at the sixth line from the top, and there has been appended to them in the margin at the bottom of the same folio the following note in a more modern hand, "Hic in editione "Barchinonensi inseruntur aprobaciones legum mariti- "marum suprascriptarum." Three more documents

complete the volume. The first immediately follows the chapters on Cruizers of War. It is headed, "Translat "della avjnenca ffeta entre lo Re. P. P. de una part e "la civitat de Barchinona de l'altra part." This document is not found in MS. Espagnol 124, nor in the printed edition of the Book of the Consulate of 1494. It purports to be an agreement between the king and the city of Barcelona, touching the pecuniary fines to be levied upon vessels trading with Egypt after the dispensation accorded to such vessels by the Holy See, and it has been published by Capmany in his Memorias Historicas, t. ii, p. 144. The next document is apparently a draft of a similar agreement between the lord and the city of Barcelona, with corrections on the face of it, and it is headed, "Translat della avinenca entre lo senyor "de una part e la civitat de Barchinoniæ de l'altra "part e questa es la avinenca seguente, 29 Jan. 1373, "28 Del. Re." This document ends on p. 171, after which comes a charter of King Pedro IV., dated X Kalend Dec. MCCCXXXX, which finishes on the face of folio 179, and at the end of it is subscribed the certificate of Peter Thomas, the scribe of the consulate, the contents of which have been already set forth at length. The addition, which appears to have been made to this MS., after it had been verified by the seal of the scribe of the consulate, by the insertion of the Barcelonese Ordinance of 1458, is suggestive that it had been completed some time before the Book of the Consulate was printed at Barcelona in 1494, inasmuch as the Ordinance of 1458 is not inserted in the latter book, but in its place appears the Ordinance of 1484, which had superseded it. It may be observed, on the other hand, that the earlier MS., Espagnol No. 124, contains no document more recent than the Barcelonese Ordinance on the subject of Maritime Assurance of A.D. 1436.

The Printed Book of the Consulate of 1494 is entitled to be regarded as the Editio Princeps of that work, upon

the text of which the Castilian, Italian, French, and Dutch translations of the Consulate of the Sea have been framed. A copy of this edition is preserved in the National Library in Paris. It is a noble specimen of early printing both as regards the type and the style, in which the text is set up in double columns. The paper is excellent, the print is clear, and the margin is ample. There is no title nor frontispiece prefixed to the volume,[1] but the contents are divisible into two parts, the first of which consists of 88 folios numbered in type, at the end of which is the Colophon: "Deo gratias. Fon acabada " de Stampar la present obra a xiiii. de Juliol del any " MCCCCLXXXXIIII. en Barcelona per Pere Posa prevere e " stampador."[2] The second part is set up in a type similar to the first part, but the folios are not numbered, and there is no printer's name appended at the end of it as in the case of the first part; but at the end of the last document, which is a Barcelonese Ordinance on the subject of maritime assurance of A.D. 1484, there is this paragraph: "Fon feta la present Crida per Anthoni " Strada Corredor de la dita civitat a iii. de Jany any " MCCCCLXXXIIII.," which is followed by the Colophon, " Aci acaben les ordinacions derrerament fetes sobra " les seguritats maritims."

It appears from the Epistle Dedicatory, which commences on the top of the reverse side of the first page of this edition, that it was the work of Francis Celelles, who, "moved by the sight of the many corrupt readings " and false spellings which were found in the Book of " the Consulate, determined upon consultation with nu-

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[1] The present press mark of this volume is $\frac{\text{F. 1731}}{\text{+ A.}}$. On the face of the first page, which is blank, is an inscription in a modern hand, "De los libros de M. Jean Nicott," beneath which are the words ὀφεσίν καὶ παρρησίαν, and under them "ne senza Sfinge, ne senza Edipo."

[2] Thanks to God. The printing of the present work was completed on the 14th July of the year 1494 in Barcelona by Pere Posa, priest and printer.

" merous shipmasters and merchants well experienced " in maritime matters to publish an amended version of " the book after collating various original versions, and " to annex to it several privileges and ordinances and " other documents connected with its subject matter." This Epistle Dedicatory is followed by a Table of Contents, which finishes on the face of the tenth folio at the bottom. The folios of this table are not numbered. At the top of the next following folio, which is numbered (I.) in type, there is the following heading: " Segueix se lo " libre de consolat novament corregit e stampat. En lo " quel son contengudes, les leys e ordinacions dels acts " maritims e mercantivols. Et primo. En qual manera " son elets los consols e lo jutge de les appellacions " quascun any. Capitol primer." After this come forty-two chapters, containing the Valencian Regulations, and at the end of the last chapter is appended the Colophon, " Aci acaba lorde judiciari de la Cort dels Consuls," which is in the middle of the first column of folio vi. Then follows a single chapter, headed " De Sportades de Alexandria," which finishes in the middle of the second column of the same folio. Then comes a heading in black letter capitals, " Aci comencen les bones costumes " de la mar, Ch. xxxxvi." The Customs of the Sea are thereupon continued without any interruption up to Ch. ccxcvii. inclusive, which terminates at the bottom of the second column on the reverse side of folio lxxx., and at the end of which is the Colophon, " Fins aci havem " parlat de les leys e ordinacions de actes maritims " mercantivols, ara posarem ordinacions e fet de armada " maritima." At the top of the first column of the next following folio numbered in type lxxxi. is the heading, " Ordinacions de tot vexell qui armara per anar en cors " e de tota armada, que es faca per mar. E primo de " admirall capita e armadors, Ch. cclxxxxviii." These chapters are continued down to Ch. cccxxiiii. inclusive, which terminates in the middle of the first column of

the folio numbered in type lxxxviii. Then comes the Colophon, "Aci acaba lo libre vulgarment apellat de "Consolat en lo qual son los capitols e leys e bones "ordinacions que los antichs ordinaren per los fets "maritims e mercantivols e encara en fets de cors o "armada. Los quals capitols e ordinacions foren loades "fermades e promulgades per les senyories davall "scrites."[1]

Three points first of all deserve attention as regards the edition of 1494. First, that Celelles speaks of having collated several original versions of the Book of the Consulate, and the book itself is described as having been newly corrected and printed; secondly, that the first heading on folio i. describes the Book of the Consulate, which was to follow, as containing laws and ordinances on maritime and mercantile matters; thirdly, that the Colophon, in folio lxxxviii., which immediately follows the chapters on cruisers of war, applies the name of the Book of the Consulate to the chapters which have immediately preceded it. This latter Colophon has given rise to such erroneous views respecting the antiquity of the Consulate of the Sea, that the Editor ventures to translate it for the benefit of the reader, to whom the Catalan original may not be perfectly intelligible.

"Here ends the book commonly called the Book of "the Consulate, in which are the chapters and laws and "good ordinances which the ancients have ordained for "matters maritime and mercantile, and likewise in mat-"ters of cruizing and armed fleets, which chapters and "ordinances were approved, confirmed, and promulgated "by the undermentioned authorities."

[1] The Editor has preferred to set out the various headings and colophons of the edition of 1494 in Catalan rather than to give English translations of them, as the edition of 1494 is very rare, its existence having been disputed by Capmany in his elaborate edition of the Consolat published at Barcelona in 1790, and the Editor is not aware of the existence of any other copy than that which is preserved in the National Library in Paris.

It may be observed, in the first place, that this Colophon is not quite in harmony with the heading prefixed to the Valencian Regulations, which makes no reference to any chapters on cruizers of war as forming part of the Book of the Consulate. This discrepancy may be explained on the supposition that Celelles had before him various MSS., and that one or more of the MSS. contained the chapters on cruizers, which had not found their way into the other MSS. This supposition is by no means unreasonable, as the earliest Italian version of the Consulate of the Sea, printed at Venice in 1539, does not contain the chapters on cruizers. Whatever may be the correct explanation of this discrepancy, two facts may be taken to be placed beyond dispute by this Colophon, first, that the Book of the Consulate terminated where this Colophon was inserted; secondly, that the concluding sentence of the Colophon must be taken to refer to the whole of what precedes it.

The concluding paragraph is to this effect "which "chapters and ordinances were approved, confirmed, "and promulgated by the under-written authorities," of whom a long list is subjoined. The catalogue of their names, as set out in the edition of 1494, is as follows:—

(1.) En lany de nostre Senyor deu Jesu Christ MLXXV. en les kalendes de Mars foren fermats per los romans en Roma en lo monester de Saint Johan de Letra per esser tengut tos temps.

(2.) En lany MCII. en les kl's de Septembre foren fermats en acre en lo passatge de hierusalem per lo Rey Luis e per lo compte de Tolosa per tenir tos temps.

(3.) En lany MCII. foren fermats in Mallorques per los Pisans per tenir tos temps.

(4.) En lany de MCXVIII. foren fermats en Pisa en Saint Pere de la Mar en la potestat de Ambro Mil's per tenir tos temps.

(5.) En lany MCLXII. en lo mes de Agost foren fermats en Marcella a la mayson del Espital en la peostria de Ser Jaufre Antor per tenir tos temps.

(6.) En lany de MCLXXV. foren fermats a Almeria per lo bon comte de Barcelona e per los genoveses per tenir tos temps.

(7.) En lany de MCLXXXVI. foren fermats en la civitat de genova en la peostria de Ser Pinell Mil'rs, e dels anciens Ser Pere Ambrosi e de Ser Johan de Sent donat e de Ser Guillem de Cormesi e de Ser Baldoni e de Ser Pere de Arenes. E aco juraren al cap de Moll per tenir tos temps.

(8.) En lany de MCLXXXVII. en los kl's de Febrer foren fermats en Brandis per lo rey Guillem per tenir tos temps.

(9.) En lany de MCLXXXX. foren fermats en Rodes per lo Galeta els jura per tenir tos temps.

(10.) En lany de MCC. foren fermats e jurats per lo Princep de la Morea de tenir tos temps.

(11.) En lany de MCCXV. foren fermats per lo comu de Venecia en Constantinoble e fermats per ells lo Rey en Johan tantost que son tolt als Grechs en la eglesia de Santa Sofia per tenir tos temps.

(12.) En lany de MCCXXIIII. foren fermats per lo compte Alemany e jurats per tenir tos temps.

(13.) En lany de MCCXXV. foren fermats e jurats en la civtat de Mecina en esglesia de Santa Maria la nova en presencia del Bisbo de Cathania per Frederich Emperador de Allamanya per tenir tos temps.

(14.) En lany de MCCL. foren fermats per en Johan de Bellemont sobre la anima del Re de Franca qui en aquella hora no era be sa en presencia dels cavallers de la host e dels templers e dels espitalers e del almirall de levant per tenir tos temps.

(15.) En lany de MCCLXII. foren fermats en Constantinoble a Sant Angel par Paleologo Emperador de fer tenir en la sua terra per tos temps.

(16.) En lany de MCCLXX. foren fermats en Suria per Frederich Rey de Chypra. E en Constantinoble per l'Emperador Constanti per tenir tos temps.

(17.) En lany de MCCLXX. foren fermats e atorgats

per la molt alt Princep e Senyor lo Rey en Jachme per la gracia de deu Rey de Arago de Valencia de Mallorques, Compte de Barchenona e de Urgell, e Senyor de Montpelier en la Civitat de Mallorques. E per lo dit Senyor foren atorgats Consols a la civtat de Valencia per la manera que damunt es dit.

After this catalogue comes the printer's colophon, already referred to: "Fon Acabada de Stampar la present "obra a xiiii. de Juliol del any MCCCLXXXXIIII. en "Barcelona per Pere Posa prevere e stampador."

The pageing of the volume ends here, and what follows may be regarded in the light of an Appendix, although it is apparently in the same type. First, there come certain Capitols de Rey en Pere of A.D. 1340. Then Ordinacions de Consellers de Barchinona per lo Consolat de de Sicilia, without a date. Then Ordinacions de Consellers de Barchinona sobre fets maritims. Les quels foren publicades a xxi. de Novembre del any MCCCCXXXV. Then Seguiren se algunes leys e ordinacions tretes de Recognoverunt proceres e daltres toccants a casos maritims e mercantivols, and, accordingly, after two extracts from "Recognoverunt proceres," comes an ordinance of King James of 2 Id. August, A.D. 1271. Then an ordinance of the Counsellers of Barcelona on the subject of Letters of Exchange, without a date. Then a Privilege of King Alphonso promulgated at Barcelona on 25 May, A.D. 1432. Then an ordinance of the Estates assembled at Barcelona on 8th Oct. A.D. 1481, that no cause should be withdrawn from the Commercial Court under pretext of a donation to a widow, or to an infant, or to a pauper. It concludes thus: "E aco meteix sia servat en tots los con-"solats de mar del principat de Carthalunya. Place al "Senyor Re' lo contengut en lo dit capitol." Then comes the title "Vuiatge aquells qui volran anar ultra "mar o de alla venir," which is concerning traders from Alexandria and from the territories of the Soldan of Babilonia. Then comes a note of a decision of King Ferdinand II. in a court held at Barcelona, A.D. 1493,

and lastly, Ordinacions de Consellers de Barcelona derrerament fetes sobra les seguritats maritimes, in 25 articles, to which is appended the paragraph "Fon feta "la present crida per Anthoni Strada Corredor de la "dita civitat a tres de Juny any MCCCCLXXXIV."[1]

Such are the contents of the Book of the Consulate, printed at Barcelona in A.D. 1494, which, as already mentioned, may be regarded as the Editio Princeps, upon the authority of which the document known as "the "Acceptations"[2] has found its way into every translation of the Book of the Consulate with this simple heading "when and where the present chapters were "affirmed." It has accordingly been received without any question as a voucher of the high antiquity of the Consulate of the Sea, until its authority was for the first time challenged by Capmany in his Memorias Historicas, II., p. 178. It will be seen that the document declares that the preceding chapters and ordinances were approved (1) in the year 1075 by the Romans at Rome on the kalends of March, in the Minster of St. John Lateran; (2) in the year 1102, at Acre, on the kalends of September in the passage to Jerusalem by King Louis and the Count of Toulouse; (3) in the year 1102, at Majorca, by the Pisans; (4) in the year 1118, at Pisa, by the Pisans, in St. Peter's on the Sea, in the Podestat of Ambrose, Milanese; (5) in the year 1162, in the month of August, at Messina, in the house of the Hospital in the Podestat of Lord Godfrey Antor; (6) in the year 1675, at Almeria, by the good Count of Barcelona and by the Genoese; (7) in the year 1186, in the city of Genoa, in the Podestat of Lord Pinell Milanese, and of the Ancients Lords Peter Ambrose and

[1] M. Pardessus in an early part of his Lois Maritimes, Tom. i., p. 11. adds to this list another ordinance of the date of A.D. 1488, but according to the Editor's notes that ordinance is not inserted in the edition of 1494, which is preserved in the Bibliothèque Nationale in Paris.

[2] This document is styled by some writers "The Approbations."

Lord John of St. Donat, and Lord William of Carmesi, and Lord Baldoni, and Lord Peter de Arenes; (8) in the year 1187, at Brindisi, by King William; (9) in the year 1190, at Rhodes, by the Galeta; (10) in the year 1200, by the Prince of the Morea; (11) in the year 1215, by the Republic of Venice, at Constantinople, and by King John at the time when Constantinople was taken from the Greeks, in the church of Santa Sofia; (12) in the year 1224, by the Count Alemany; (13) in the year 1225, in the city of Messina, in the church of Santa Maria the New, in the presence of the Bishop of Catania, by Frederick, Emperor of Germany; (14) in the year 1250, by John de Beaumont, upon the soul of the King of France, who at that time was not very well, in the presence of the knights of the army, and of the Templars, and of the Hospitallers, and of the admiral of the Levant; (15) in the year 1262, at Constantinople, at Saint Angelo, by the Emperor Palæologus; (16) in the year 1270, in Syria, by Frederick, King of Cyprus, and in Constantinople, by the Emperor Constantine; (17) in the year 1270 they were confirmed and agreed to by the very high prince and lord King James, by the grace of God king of Aragon, of Valencia, of Majorca, Count of Barcelona, and of Urgell, and lord of Montpelier, in the city of Majorca, and by the said Lord Consuls were authorised in the city of Valencia in the manner above said.

It is hardly too much to say, that there is no one single fact, as stated in this document, which is supported by any contemporaneous evidence. On the contrary, the majority of the events, which it professes to record, could not have happened at the times specified. The event recorded in paragraph (1) is indeed possible to have happened, but it is highly improbable that the Romans, who had no maritime commerce at that time, should have taken the lead in reducing the Customs of the Sea into writing, or should have sworn to observe

a body of maritime usages compiled by the magistrates of a foreign state during the pontificate of Gregory VII., who was one of the most learned jurisconsults of his age. The event recorded in paragraph (2) under the date of A.D. 1102, is simply impossible, as the throne of France was occupied at that time by Philip I.,[1] who never visited the Holy Land. In a similar manner the event recorded in paragraph (3) could not have happened, as at that time Majorca was in the possession of the Moors. Paragraph (4) records a possible event, but it is in conflict with legal records preserved in the Archives of the Commune of Pisa. Paragraph (5) comes under the same category; it records a possible event, but cannot be reconciled with existing records. Paragraph (6) is vague as regards the time, but the expedition of Raymond Berenger, Count of Barcelona, against Almeria, in which the Genoese took part, was in A.D. 1147, and the Count died in 1162. Paragraph (7) records a possible event, but no such solemn event is recorded in the Annals of Genoa, which have been minutely compiled by Caffaro from 1100 to 1293, and are published in the sixth volume of Muratori's Annals. Paragraphs (8), (9), and (10) do not admit of any satisfactory analysis. Paragraph (11) is erroneous in point of time, as Constantinople was taken from the Greeks in A.D. 1204, and the alleged acceptance of the Consulate of the Sea by the Venetians is neither recorded by any Venetian annalist, nor can it well be reconciled with the subsequent enactment of a code of maritime law at Venice in A.D.

[1] The Editor has been led into an inaccuracy as regards paragraph (2) in his introduction to vol. ii., p. lxix, in speaking of Louis VI. as king of France in 1102. Philip I. was in fact king of France at that time, and Louis VI. only came to the throne in 1108. In the Italian and Dutch translations of the Consulate, the date assigned to the events mentioned in paragraph (2) is A.D. 1111, in which year Louis VI. was on the throne of France. Neither Philip I. nor Louis VI. ever visited the Holy Land.

1259, in which there is not the slightest allusion to the Consulate of the Sea. Paragraph (12) may refer to a member of the Alemany family, which was distinguished at Genoa, about whom history is silent. Paragraph (13) records an event which may have happened, but the historian Richard St. Germain, who narrates minutely the events which took place during the visit of the Emperor Frederick II. to Messina, is silent on this subject. Paragraph (14) is at variance with the historical fact that in A.D. 1250 Louis IX. of France was a prisoner in the hands of the Saracens. Paragraph (15) records a possible event, inasmuch as Michael Palæologus was emperor of the East in A.D. 1262, but the Byzantine historians make no mention of his acceptance of the Consulate of the Sea. Paragraph (16) conflicts with the historical facts that Hugo III. was on the throne of Cyprus in the year 1270, and that Michael Palæologus was emperor of the East in the same year. The final paragraph (17) is the most extraordinary for Celelles to have sanctioned, inasmuch as the first appointment of Consuls of the Sea at Valencia took place in the reign of Peter III. of Aragon, eight years after the death of King James. On the other hand, Capmany has stated that he had ascertained by careful enquiry that King James was not in the island of Majorca in the year 1270.

It is an extraordinary circumstance in the History of Literature that, until Capmany published his "Memorias "Historicas sobre la marina, comercio, y artes de Bar-"celona," in 1779, no author had ever so much as questioned the facts set out in the "Acceptations," or the immediate connexion of the document so named with the Consulate of the Sea. There can be no doubt that the Abbé Gaetano, who wrote at the commencement of the 17th century, relied on this document, when he asserted that the Pisans composed the earliest body of sea-laws and submitted them to Pope Gregory VII. for his approval; that they were confirmed by his Holiness

in the church of St. John Lateran in A.D. 1075, when the Roman people bound themselves by an oath to observe them for ever; and further, that the Pisans, first in Majorca, in A.D. 1115, and subsequently at Pisa, in A.D. 1118, bound themselves by an oath to observe for ever the same body of maritime laws; which laws soon came to be received by all princes and peoples of the east and of the west, and which, the Abbé goes on to say, "are "extant at the present time in Latin,[1] Italian, Pro- "vencal, Narbonese, and Catalan, both in manuscript "and in print, and in which the facts which we have "briefly stated, are set forth at greater length."[2]

It has been mentioned that the edition of the Book of the Consulate of A.D. 1494 was unknown to Capmany, who at the time when he compiled his "Codigo "de los Costumbres Maritimas de Barcelona" had before him the edition of A.D. 1502, which he states in his preface to be the earliest edition of the Consulate printed at Barcelona. This edition of 1502 is also extant in the Bibliothèque Nationale in Paris. The press mark of the volume, which is lettered outside "Nego- "tiation del Mar," is *E $\frac{284}{A.}$. The text of the Book of the Consulate in this edition is identical with that of the edition of A.D. 1494, but the volume differs somewhat from the earlier volume, inasmuch as it has a frontispiece and has been issued from a different press. The frontispiece has at the top of the page the title "Libre de Consolat tractant dels fets maritims, &c.,"[3] beneath which is the engraving of a ship, and imme-

[1] A Latin translation of the Consulate is said to have been made by Daniel Ficher of Rostock, the publication of which is stated by Lange in his "Brevis Introductio in noti- "tiam legum nauticarum" to have been announced in A.D. 1698.

[2] Extant ipsæ maris ordinationes linguâ Latinâ, Italicâ, Provenzali sive Gallicâ, Narbonensi et Catalanâ, tum manu exaratis, tum impressis codicibus evulgatæ, quibus multis fusius ostenditur, quod nos brevius asseruimus.

[3] Immediately under these words there is inserted in a modern hand "Collegii Paris. Societat. Jesu," intimating that the work had once belonged to the College of Jesuits in Paris.

diately below the ship the epistle dedicatory of Celelles commences. After which comes the table of contents, the three treatises, and the document known as "The Acceptations," precisely as in the edition of A.D. 1494. The printer's colophon, which is subjoined to the Acceptations, differs from that of the earlier edition, and announces that the printer was a German, "Fon acabada de stampar " la present obra a xiiii. de Septembre del any MDCII. " en Barcelona per Johan Luschner Allamany Stampa- " dor." This edition throws no light on the source, from which the "Acceptations" were derived.

The edition of 1502 differs slightly from that of 1494 as regards the Appendix, inasmuch as the Appendix is printed in a different type from the preceding part of the volume, and there is some variation in the documents themselves, which is not material for the purpose of the present inquiry. Both editions are in perfect harmony, as regards "the Acceptations," in annexing the document to the chapters on cruizers of war by an identical paragraph.

There is, however, trustworthy evidence that there have been versions of the Book of the Consulate more ancient than that of the printed book of 1494, and in which the document known as the Acceptations was not inserted, or if inserted, was inserted in the body of the Appendix, and not in immediate connexion with the chapters on cruizers of war. The most recent of these versions was contained in a printed book of the Consulate, which was sold at Paris in 1770 at the sale of the library of Louis Gaignat, and which Capmany had for a short time in his possession, and on highly probable grounds considered to have been printed before A.D. 1484. Capmany reports the document known as "the Acceptations" to be altogether absent from this version. It is also absent from MS. Espagnol, 56. With regard to the more ancient MS. Espagnol, 124, the document in question is presented to the reader under a

totally different character from that which it assumes in the edition of 1494. Its place is amongst the documents collected in the appendix, and it has a special heading, which announces that the chapters which follow were originally made in the island of Cyprus, whilst its contents differ in many important particulars from those of the document which Celelles has inserted in the edition of 1494. There appears also to have been in existence at some earlier period another MS. version of the Book of the Consulate, from which the earliest Italian version was printed at Venice in 1539, in which the document known as "the Acceptations" was printed at the end of the appendix.

The position which this document occupies in MS. Espagnol 124, and the terms of the heading, which is prefixed to it, give to it, as already observed, quite another character from that which it assumes in the edition of 1494. This MS. is divisible into six parts, of which the first five may be regarded as corresponding to the part which is styled "Lo Libre de Consolat" in the edition of 1494, with the exception that at the conclusion of the chapters on cruizers of war, there immediately follows the colophon "Ffinito libro sit laus gloria Christo," and that neither the document known as "the Acceptations," nor the paragraph which introduces it in the edition of 1494, is subjoined to those chapters. A blank folio follows, after which the sixth part, corresponding to the appendix in the edition of 1494, commences with the heading "Aci "comencen los usatges de Barchinona Carta del Sen- "yor," which ushers in the ordinance of king Peter IV. of Aragon of A.D. 1340. This is followed by a document headed "Que Consolat se deu pagar en la illa di "Sardyna," which is not in the edition of 1494. Then comes a document to which is prefixed the title "Aco "son capitols qui s'faceren en chypre e foren fermats per molts e grans senyors," and which contains the following paragraphs:

Aquests capitols foren fets e denunciats en Chypre en poder frederico Re de Chypre e foren fermats per Emperador Constanti en Constantinoble de tenir los tots temps.

§ Item foren fermats per lo Rey en iohan per lo comu de Venecia con Constantinoble fon presa que fon tolta als grechs en l'any MCCXV. e foren jurats en Sancta Suffia de tenir los tots temps.

§ Item foren fermats en Acre en lany MC. secundo kals Septembris en lo passatge del Re de Tunis e del Comte de Tolosa.

§ Item foren fermats en Almeria per lo Compte de Barchinona anno Domini MCCLXXV.

§ Item foren fermats en Pissa en Sancta Pietro de la Mar en la potestat de Ser Ambrozo Milanes, MCXVIII.

§ Item foren fermats e jurats en Mallorques per Pisans, anno MC.

§ Item en la mes de Agost foren fermats en Marsella en avinyo en la meso del spital en la potestaria de Ser Jaufre clavres, anno Domini MCLXII.

§ Item foren fermats en Brandis en lany del Rey Gemo, MCLXXXVIII. en las cals Febr.

§ Item los ferma lo galeta en Rodisi los iura, anno Domini MCCXXX.

§ Item foren fermats del comu de Genoa en la potestat de Ser P. de Ambrozii e de Ser jolial de Sanct Donat e de Ser iohan Garmelii el capitol del Moll e aco juraren per tots a temps, anno MCLXXXV.

§ Item los jura Golderich emperador de Alemanya e S. Pando de Mardenamb son almirall de tenir e fer tenir. E aco fon fet a Macina a Sancta Maria la Nova en presencia del bisbe de Cathania en lany MCCXXV.

§ Item lo iura lo princep de lalmore, anno Domini MCC.

§ Item lo iura lo comte Alamany lany MCCXIIII.

§ Item foren fermats en Ancona lan MCCV.

§ Item en lany MCCL. los iura en Johan de Bellmona e attendre sobre la ma del Rey de Franca qui en aquest temps no era en presencia dels cavallers de la host e del temple e del spital e dels spitaler des alamanys e del almirall Levaton del senyor de larrhar e dels senyors de les naus de attendre e de fer attendre.

This last paragraph is immediately followed by an ordinance of the councillors of Barcelona to which is prefixed the title "Comencen les ordinacions e capitols que "les honrats consellers e prohomens de la civitat de Barchna faeren sobre los consols de Sicilia." This ordinance is without a date, but it has been published with the date of 1341 by Capmany in his Memorias Historicas t. i. p. 188.

Such is the earliest form, in which the documeut known as "the Acceptations," has come down to us. It will be seen that the chapters, to which it refers, are expressly stated to have been made in Cyprus in the reign of Frederick king of Cyprus, but in what year this took place is not stated; it is, however, to be inferred from the statement in the third and sixth paragraphs that it must have been at some period prior to 1100 A.D. But prior to that period the island of Cyprus formed part of the Eastern Empire, and was governed by dukes nominated by the Emperor of the East, until it was detached from the empire by the revolt of Isaac Comnenus in A.D. 1182, from whom it was subsequently wrested in A.D. 1191, by Richard I. of England, and conferred upon Guy de Lusignan in 1192, who was the first of the Latin kings of Cyprus. Under that king the "Assises de Jerusalem" were introduced into Cyprus as the Maritime Law of the Latin population, whilst the Greek inhabitants were allowed to live under the Maritime Laws of the Basilica and of the compilation known as the Maritime Law of the Rhodians. A collection of laws observed by the Greek inhabitants of the island of Cyprus under the rule of the Latin kings has been pre-

served amongst the MSS.[1] in the Bibliothèque Nationale in Paris, from which it appears, that with the exception of a few chapters the Maritime Laws of the Greek population were identical with those, which prevailed in the island, whilst it was a part of the Eastern Empire. It should thus appear to be highly improbable that any king of Cyprus could have had the chapters contained in the Appendix of MS. Espagnol 124, drawn up in the island of Cyprus, seeing that after the title of "king" had been assumed by the rulers of that island, the Latin and the Greek populations had respectively their own systems of Maritime Law, of which both were at variance with the Customs of the Sea on the subject of Maritime Jetison. Celelles indeed has adopted a later date for the supposed reception of the Consulate of the Sea by Frederick King of Cyprus, assigning it to A.D. 1270: but Hugo III., as already stated, was in that year king of Cyprus, and Michael Palæologus, not Constantine, as likewise stated by Celelles, was Emperor of Constantinople. With every wish to discover in the document, which is inserted in the Appendix of MS. Espagnol 124, a basis of truth in connection with some international recognition of the consular office and jurisdiction, the Editor is constrained to regard it equally with the document in the Book of the Consulate of 1494, as a document into which, if it be not altogether a clumsy fabrication, dates have been stupidly foisted, which have both destroyed its value as a record of the events which it may have been originally intended to commemorate, and have also rendered it ridiculous for the purpose, which the introduction of those dates was intended to serve.

The Editor is under great obligation both to Capmany and to M. Pardessus for the assistance, which their writings have afforded him, in analysing the assertions

[1] The press mark of this MS. in the old catalogue is No. 1391.

contained in the common version of the Acceptations, which is appended to the Chapters on Cruizers of War in the Printed Book of 1494. How far those assertions may have promoted the reception of the Book of the Consulate of the Sea, as a book of authority on Maritime Law, it is difficult now to ascertain. The crowns of Castile and of Aragon had been united in the persons of Ferdinand and Isabella some few years before Celelles published his edition of the Consulate, and it was quite in accordance with the spirit of that age for a Barcelonese publicist to claim for the sea laws of his country the sanction of the Holy See, and to assert that they had received in the eleventh century the approval of so famous a jurist as Pope Gregory VII., but in the nineteeth century the pious fraud of Celelles should no longer be upheld, "non tali auxilio nec defensoribus "istis tempus eget."

The testimony of Jerome Paul, the chaplain of Pope Alexander the Third, who wrote an account of the city of Barcelona a few years before the edition of Celelles made its appearance, is most valuable in indicating the true sources of the Consulate of the Sea. He writes thus[1] in A.D. 1491: "There are at Barcelona laws as to "buildings and as to commerce, and judgment is rendered "according to them on principles of equity, and summarily by two magistrates who are called consuls; "and hence the laws are called consular laws; the use "of which laws prevails at this time not merely in that "city, but in almost every maritime city the controversies of mariners and of merchants are settled by "these laws, or by laws derived from them, with the "greatest authority; and as formerly men spoke of the "Laws of Rhodes, now everyone speaks of the Laws of "Barcelona."

If there had been any well authenticated tradition on record in the thirteenth or the fourteenth century, that

[1] The original Latin text will be found above at p. xxxv.

the Customs of the Sea, which are without doubt the most ancient part of the Book of the Consulate, had been reduced into writing in the eleventh century, such a tradition would have demanded the respectful attention of every candid enquirer; but the earliest mention of any Custom of the Sea, which was observed at Barcelona as a rule for the decision of maritime disputes, is to be found in a privilege granted by King Peter III. of Aragon in A.D. 1283 to the city of Valencia, in which that king instituted Consuls of the Sea in the port of Valencia, and authorised them to terminate all disputes between merchants and mariners, "secundum consuetu-" dinem maris prout est in Barchinona fieri consuetum." The Custom of the Sea is not here spoken of as a written custom, nor do we find any mention of a written custom in any document prior to the reign of Peter IV. of Aragon, when regulations were issued by that king some time between A.D. 1336 and 1343, for the guidance of the consular courts at Valencia, in which the judges of those courts were enjoined to conform their decisions to "the written Customs of the Sea." These regulations are contained in the document which is prefixed to the Customs of the Sea in MS. Espagnol 124, and in the printed Book of the Consulate of 1494, and are a suitable introduction to them, but they do not carry the evidence of the existence of any written Customs of the Sea at Barcelona further back, than to the early part of the fourteenth century.

There are writers bold enough to assert that those written customs were embodied in "the Amalphitan Table," and that the Consulate of the Sea is but an expansion of the rules laid down in that table. The high repute of the "Tavola Amalphitana" is due to a statement made by Marino Freccia, a native of Naples, in his treatise on feudal tenures, published about A.D. 1570, from which Brencman in his "Dissertatio De Republica " Amalphitana" has cited the following passage: "Hinc

" in regno," Freccia is speaking of the kingdom of Naples, " non Lege Rhodiâ maritima decernuntur, sed " Tabulâ, quam Amalphitanam vocant, omnes contro- " versiæ omnesque lites et omnia maris discrimina ea " lege ac sanctione usque ad hæc tempora finiuntur." Various writers of eminence have given to this statement of Freccia's a larger interpretation than is necessary for the purpose, for which Brencman cites it. Brencman had been speaking of the distinguished privileges enjoyed by Amalphitan citizens, and had mentioned, amongst others, that they carried their own laws with them wheresoever they went. In illustration of this fact he quotes the passage above-cited from Freccia, and afterwards goes on to cite a diploma of May 9th, A.D. 1190, under which the consuls and people of the city of Naples had granted to the merchants of the Duchy of Amalphi, resident within the city of Naples, the privilege of electing from amongst themselves consuls, who should decide all their disputes according to their own good customs. The passage cited from Freccia does not necessarily imply anything more than that, in the case of Amalphitan citizens resident within the kingdom of Naples, their disputes in maritime matters were settled in the sixteenth century not by the Rhodian Law, but by the Amalphitan Table; and unless this limited interpretation is put upon Freccia's statement, it will be found to be in conflict with a fact about which no dispute can be raised, namely, that the general law administered in maritime questions by the Neapolitan tribunals in the seventeenth and eighteenth centuries was the Roman law. This is not a mere matter of inference from the writings of jurists, but is a necessary conclusion from the reported decisions of cases heard before the Supreme Court at Naples. Giannone, however, and Sismondi, and other writers of eminence, have given to Freccia's statement too large an interpretation, as if he had intended to assert that the Amalphitan

Table had in the sixteenth century superseded the Rhodian Law in all maritime causes heard before the Neapolitan tribunals, but none of these writers appears ever to have seen the Amalphitan Table, nor to have had any independent knowledge of its contents. M. Pardessus, with the assistance of the French Government, caused careful search to be made, but in vain, in the public libraries and in the legal archives of the kingdom of Naples for a copy of the Amalphitan Table, and he states as his own opinion, that doubts might reasonably be entertained of that table having in fact ever existed; at the same time he expresses his belief, that if the Amalphitan Table should ever be discovered, it will be found to contain nothing beyond the legislation of the Pandects and of the Basilica. Giannone, on the other hand, perplexed at the disappearance of the Amalphitan Table, has suggested that the Consulate of the Sea was composed from it, and he is responsible for that theory, which upon his authority has found favour with several eminent writers, and has been adopted by Dr. Christopher Robinson, the learned translator into English of two important chapters of the Customs of the Sea on the subject of maritime prize. Dr. Christopher Robinson, subsequently judge of the High Court of Admiralty of England, at the conclusion of his translation of these two chapters, which were published in 1801, has observed that the Consulate of the Sea "is generally allowed to "have been composed from the Amalphitan Table, and as "that is supposed to have existed as a body of sea-laws of "great and extensive authority in the Mediterranean from "the close of the eleventh century, there may be perhaps "no great variation in the substance of that account," and "of the account given in the table prefixed to the Italian "editions of the Consulate, in which it is specifically "asserted to have been received at Rome in the year "1075, and at various places at various periods through "the eleventh, twelfth, and thirteenth centuries."

It would fare ill with the Amalphitan Table if the fact of its existence depended on the authenticity of the table,[1] of which Dr. Christopher Robinson speaks as being prefixed to the Italian editions of the Consulate of the Sea; or if it were necessary, in order to establish the authenticity of any body of maritime regulations, which may claim to be received as the Amalphitan Table, to make out their parental relation to the Customs of the Sea.

M. Pardessus' comprehensive Collection of Maritime Laws was completed in 1845. He has discussed the Amalphitan Table in his Introduction to the Laws of the Two Sicilies, and he has added a supplemental note on the same subject in the sixth and last volume of his Lois Maritimes, p. 481, but he does not appear to have been aware, when he added the finishing stroke to his work, that a MS. containing the Tavola Amalphitana had been recently discovered amongst the Foscarini MSS. in the Imperial library at Vienna. That important body of MSS., the collection of the distinguished jurist and statesman, Marco Foscarini, who was elected Doge of Venice on 30th May 1762, and died too soon for his country on 31st March 1763, came into the possession of the Emperor of Austria in 1801, by purchase from the heirs of the Doge, but no account of the collection of MSS. seems to have been made public before 1843, when Foscarini's "Storia Arcana" of the reign of the Emperor Charles VI. was for the first time published in the fifth volume of the Archivio Storico Italiano at Florence. The Editor of the "Storia Arcana" was Tommaso Gar, who annexed to it a descriptive catalogue of the Foscarini MSS. This catalogue gives a brief account of the contents of each volume, and amongst the contents of Codex CLXXXIV. is

[1] The table here mentioned is the document known as "the Accep-"tations," the spurious character of which was unknown to Dr. Christopher Robinson.

a MS. with the heading "Capitula et Ordinationes Curiæ "Maritimæ nobilis Civitatis Amalphæ, quæ in vulgari "sermone dicuntur La Tabula di Amalfa." There is also bound up in a later part of the same volume another MS., which is headed "Incipiunt Consuetudines Civitatis "Amalphæ, compilatæ et ordinatæ anno Domini mil-"lesimo decimo, anno regiminis ipsius civitatis per "ipsos Amalphitanos."

The "Tabula" itself was published in the following year by Tommaso Gar in the appendix to the Archivio Italiano, Firenze, 1842–44.[1] It consists of sixty-six articles, of which twenty-one are in Latin, and forty-five in Italian, interspersed with one another, and some of the articles contain Latin and Italian words mixed up together. The Consuetudines also of the city of Amalphi have been published in the same volume of the Archivio Italiano. They are drawn up altogether in Latin, and the preamble of them states that they were a revision, made on 30 November A.D. 1274, in the tenth year of the reign of King Charles I. of Anjou, and at the instance of the Archbishop of Amalphi, of the ancient customs of the city of Amalphi, which had been collected for the first time and reduced into writing in A.D. 1010 from the memory of the best informed citizens, and under royal authority. These customs, which are set forth in twenty-seven articles, treat of matters, the regulation of which appears to have been the common object of all the most ancient custumaries of modern Europe, such, for instance, as the dower of married women, the succession of children to the goods of their parents, the right of the father to dispose of his property by testament, &c. There are also to be found amongst these customs special provisions, which are in harmony with other historical

[1] The "Tabula" has been subsequently published by Dr. L. Goldsmidt in the seventh volume of "Zeitschrift für das Gesammte Handelsrecht, Erlangen, 1864, illustrated with annotations from the pen of Dr. Paul Laband, Professor of Law at Königsberg.

documents referring to Amalphi, such, for instance, as the provision that citizens of Amalphi in every part of the kingdom of Naples are entitled to have their civil suits decided by their own judges exclusively.

On the other hand, the "Tabula" has neither preamble nor ratification to explain its origin. It has the air of being complete, as the first article commences with the words "In primis," and the sixty-sixth and last article is followed by the colophon, "Laus Deo," which is the usual form under which the scribe expresses his thankfulness that he has completed his task. An introductory notice, however, respecting Amalphi precedes the title prefixed to the table. It contains a description of the allegorical figure under which Amalphi was generally represented in paintings, and recites a Latin verse, of which Antonius Panormitanus was the author in the early part of the fifteenth century, attributing the discovery or the utilisation of the mariner's compass to the Amalphitans. This notice and the title prefixed to the table are the only explicit indications that the table is connected with Amalphi, but reference is made in the seventh article to the city (ad usum de Rivera civitatis prædictæ), and there is a further reference in the thirty-ninth article to the kingdom (lo Regno), by which is probably meant the Kingdom of Naples. The text also fully bears out the description of the document given in the title, namely, that it is a "Curial "instrument," as the law is presumed in every article, under which the managing owner, or the merchant, or the mariner, as the case may be, is required to do, or to refrain from doing, the particular act mentioned in the article, and a particular use of the first person in the forty-seventh article is suggestive that the document was drawn up by the registrar of a court. There are, however, certain tests which may be applied to the document for the purpose of ascertaining if it tallies with the description given of the Tavola Amalphitana by

Marino Freccia.[1] For instance, it ought, according to Freccia's account, to differ in some of its more important provisions from the Rhodian law, with which he contrasts it, and if the test is applied to this document, which the Editor has elsewhere suggested to be a crucial test of the identity or diversity of any two systems of medieval maritime law, it will be found that its provisions on the subject of contribution in cases of maritime jetison are at variance with these maritime usages known under the name of "The Maritime Law of the Rhodians." The same observation holds good, if by the term "Rhodian "Law," Freccia intended to describe any of the fragments, which have been handed down to us under that name in the Digest of Justinian.

With regard to the age of the Foscarini document, the circumstance, that the language in which it is compiled is partly Latin and partly Italian, would not preclude its being referred to a period as early as the eleventh century, at which time the ancient Consuetudines of the city of Amalphi are stated to have been compiled, for although many eminent writers, familiar with the history of the Italian language, have recorded their opinion that no legal documents were written in that language before the twelfth century, the Decisions of Trani, which were drawn up in A.D. 1063, in the Italian tongue, are evidence that maritime laws were an exception to that rule. There is, however, internal evidence in the Foscarini document, which forbids our referring it to so early a period, inasmuch as reference is made in several paragraphs to the award of the Consul (arbitrium Consulis), under which name an officer is clearly intended, who administered justice amongst the merchants and mariners

[1] Freccia in his treatise de Subfeudis Baronum. Neap. 1554. Lib. i. c. 7. De offic. Admiral. Maris, writes "In regno non lege Rhodia Maritima "decernuntur, sed secundum tabu- "lam, quam Amalphitanam vocant, "omnes controversiæ, omnes lites "et omnia maris discrimina ea "lege, ea sanctione usque ad hæc "tempora decernuntur."

of a ship during its voyage on the high seas, or whilst the ship was delayed in a foreign port, but there is no historical record of the institution of any such officer by any European power before the thirteenth century. It should be observed, however, that Amalphi was one of the earliest of the great commercial cities of Italy, which established commercial factories in the Levant, and it is possible that Amalphi may have set the example to Marseilles and to Barcelona of appointing temporary consuls to exercise jurisdiction within Amalphitan vessels on the high seas, until they should have arrived within the jurisdiction of a consul permanently resident in a foreign port.

The theory that the Consulate of the Sea was compiled from the Amalphitan Table collapses altogether upon the assumption, that the Foscarini document contains the table in question. If we resort, for instance, to the same test which has been applied to the Table with the object of contrasting it with the Rhodian Law, it will be found that there is the greatest diversity between its provisions on the subject of contribution in cases of maritime jetison and those of the Customs of the Sea. Other elements of diversity might be readily pointed out, for instance, the provisions of the "Tabula" in the case of vessels, which sail as consorts, differ in important particulars from those of the Customs of the Sea, and the requirement of the "Tabula" that every managing owner of a vessel, on his return from a voyage, shall account in Court to the other part-owners, and shall divide the profits of the voyage with them according to custom, has no place in the Customs of the Sea. The same subject matter may indeed be discussed in both compilations, but it is discussed from different points of view, and the Prudhommes who compiled the Customs of the Sea at Barcelona most assuredly framed them after a different set of usages from those, which prevailed at Amalphi in similar matters at the time, when the document, which has been preserved

amongst the Foscarini MSS., was drawn up. A careful examination of this MS. will satisfy every candid mind that Giannone's theory is not only untenable, but is unreasonable, more so even than the theory which has found favor with Mr. Hallam, that the Rolls of Oleron were chiefly borrowed from the Consulate of the Sea. The surest test of the identity of any medieval system of maritime law with the Roman law, or with any contemporaneous body of medieval sea-laws, is, as already observed, to be found in the identity of the rule of contribution in cases of maritime jetison. The Roman law on this subject differed from the compilation known as the Maritime Law of the Rhodians. The Consulate of the Sea differed from both of those systems of law, and the Judgments of the Sea differed from the Consulate of the Sea, whilst the principle approved in the Judgments of the Sea has found acceptance with most of the maritime states of modern Europe.

There is, however, to be discovered in the provisions of four articles[1] of the "Tabula" a strong likeness to the provisions contained in five articles[2] of the Rules of Procedure sanctioned by Peter IV. of Aragon for the Consuls of the Sea at Valencia. These Rules are prefixed to the Customs of the Sea in the edition of the Book of the Consulate of the Sea, printed at Barcelona in 1494: and if it were necessary to decide which set of articles are entitled to be regarded as the parent articles, the articles of the Rules of Procedure would appear to be of a more complex character than those of the "Tabula," and to contain additional matter, and for other reasons may reasonably be supposed to be not of such high antiquity as those of the "Tabula." But the likeness,

[1] The four articles in question are the fifty-ninth, the sixtieth, the sixty-first and the sixty-second of the "Tabula."

[2] The five articles of the Valencian regulations are not in consecutive order; they are numbered xxvii., xxviii., xxxii., xxxiii. and xxxiv.

which is to be discovered in the provisions of the two sets of articles, may be accounted for by supposing that their provisions, so far as they resemble one another, are the expression of a Common Law of the Sea, which prevailed in the ports of the Mediterranean in the thirteenth and fourteenth centuries, and of which traces are to be found in the Maritime Statute of Ancona. Their similarity does not raise any necessary presumption that the one set of articles was derived from the other.

It is a curious coincidence that the sources of the two great streams of maritime law, which have spread themselves over the north and the south of Europe respectively, should be traceable to districts inhabited by peoples of cognate race settled at no great distance from one another on opposite sides of the same range of mountains. On the southern slopes of the Pyrenees a little free state, of which the town of Jacca was the capital, and of which the Fueros are perhaps more ancient than any local Custumary of Europe, had maintained its independence in the midst of the Moorish conquests, and had become early in the ninth century the seat of the government of a count, to whom, conjointly with the counts of Pampeluna and of Barcelona, the Emperor Charlemagne entrusted the guardianship of the frontiers of his empire against the Moors. On the counts of Pampeluna asserting their independence against the successors of Charlemagne in the latter part of the ninth century and assuming the royal title, Jacca followed the fortunes of Pampeluna, but in the middle of the eleventh century it was detached from Navarre and became the nucleus of the monarchy of Aragon. The kings of Aragon, the chieftains originally of a little district on the River Aragon, finding themselves too closely cooped up in their mountain-valleys by the small Moorish states on their northern frontier, and being encouraged by the victories of the Christian arms in Castile, began in the middle of the eleventh century to attack

their Moorish neighbours with success. Amongst other fruits of victory the city of Saragosa, which had been ruled by a race of Mahommedan princes for several centuries, was wrested from the Moors in the early part of the twelfth century by Alphonso I. of Aragon, and it became the capital of his kingdom, which on the marriage of his daughter and heiress the Princess Petronilla to Raymond Berenguier, count of Barcelona, was united in one State system with Catalonia under the sceptre of Count Raymond, as Regent of Aragon. It was not, however, until A.D. 1258, that his grandson King James I. of Aragon, obtained from Louis IX. of France, the renunciation of the supremacy of the Franks over Barcelona. The same monarch had previously earned for himself the surname of "the Conqueror," by wresting Valencia from the Moors in 1238, and by extending his conquests to the island of Majorca. One of the first legislative acts of this prince, who would probably have been known to posterity by the title of "the Wise," like his contemporary Alphonso X. of Castile, if the lustre of his military exploits had not cast his legislation into the shade, was to issue a privilege to the city of Valencia (8 Oct. 1243) after the example of Count Raymond at Barcelona, under which full protection was secured to the person and property of all who might suffer shipwreck on the coasts of Catalonia or Valencia. His next act was to have the usages of Valencia reduced into writing, in which are found various provisions on maritime matters, and amongst others on maritime jetison, which differ from the Roman Law, and mark the commencement of a new epoch.

Barcelona had meanwhile acquired a considerable lead in maritime commerce. Barcino, originally founded by the Carthaginians, had been a port of some consequence in the time of the Romans, and after Charlemagne had extended his empire south of the Pyrenees as far as the Lobregat river, Barcelona became the most important

maritime outpost of the empire of the Franks on the shores of the Mediterranean. Its inhabitants were adventurous and hardy mariners, and their commerce was largely developed in the twelfth century, under the wise legislation of Count Raymond, the husband of the Princess Petronilla of Aragon. The result of his marriage with the heiress of the Crown of Aragon had been to bring the principality of Barcelona into a personal union with the Kingdom of Aragon, but Catalonia never became a substantive part of the Kingdom of Aragon any more than Valencia after its conquest by King James I. This circumstance may serve to explain how the cities of Barcelona and Valencia maintained their separate systems of law, uncontrolled by the Ricoshombres of Aragon. In the twelfth century the military fleet of Barcelona had acquired sufficient importance to take part as the ally of Pisa in a maritime campaign against the Moors in the island of Majorca, and in the next following century the merchants of Barcelona had factories established in the maritime towns of the Barbary Coast, in Egypt and in Syria, in the island of Cyprus, and at Constantinople. It ought not, therefore, to excite any surprise, if Barcelona is found to have taken the lead of the maritime cities on the shores of the Mediterranean, south of the Pyrenees, in reducing its maritime customs into writing. Such a measure was not merely highly convenient, inasmuch as maritime disputes had a tendency to multiply with the expansion of maritime commerce, but it had become a matter of urgency in order to secure the due administration of justice by a new order of magistrates, who could not call to their assistance on each occasion the Prudhommes of the Strand at Barcelona to expound to them the Customs of the Sea.

These new magistrates were of two classes, namely, permanent consuls who were charged with the exercise of jurisdiction over Catalan merchants and mariners

commorant in foreign countries, and temporary consuls invested with jurisdiction over Catalan ships whilst navigating the high seas. At what period the former class of consuls[1] was first established in accordance with treaties to protect the interests of Catalan subjects in foreign countries, is not very clear, but the earliest institution of temporary consuls, invested with magisterial authority over the passengers and crews of Catalan vessels on the high seas, dates from A.D. 1258, when James I., as King of Aragon and Count of Barcelona, gave his sanction to an ordinance which had been prepared by the Prudhommes of the Strand of Barcelona, to regulate the navigation of Catalan vessels.[2] This ordinance discloses to us the existence of a body of Prudhommes at Barcelona in the middle of the thirteenth century, designated as the "probi homines ripariæ "Barchinonæ," who had a consultative voice in the framing of the ordinance, and who formed at such time a corporation under the title of "Universitas Procerum "Ripariæ Barchinonæ." There is no mention in this ordinance of any tribunals which had cognisance exclusively of maritime matters at Barcelona, such as we find was subsequently exercised in A.D. 1284 by consuls of the sea, but the king's bailliffs and vicars are directed to enforce the provisions of the ordinance, which were to remain in force, "quamdiu nobis placuerit et Universi-"tati procerum Ripariæ Barchinonæ." It may deserve remark that the officers, who were to be appointed under this ordinance to exercise jurisdiction on the high seas

[1] The Statute of Gaeta is probably the earliest municipal statute, which treats of the jurisdiction of resident consuls. It describes the office as most ancient, "Officium "consulum nationum est antiquis-"simum." The date of this statute is uncertain, but it is generally considered to represent a state of things which existed antecedent to the 13th century. It has been printed by M. Pardessus in his Lois Maritimes, tom. v., p. 251.

[2] These officers are probably identical with the "Promens" referred to in chapt. xciv. of the Customs of the Sea.

over Catalan vessels, are not termed "Consuls," but "Proceres," whereas, at the time when the Customs of the Sea were drawn up in their present form, they had come to be designated Consuls. (Chap. LXXIV.)

On the northern side of the Pyrenees another system of maritime administration had superseded in the thirteenth century the Prudhommes of the Strand. The ancient aristocratic municipalities, a tradition of the Roman Empire, had been replaced almost everywhere in Languedoc in the twelfth century by democratic communes, governed by elective consuls, but in Guienne the Norman type of the commune with its maire and echevins had been generally adopted in the thirteenth century, as something intermediate between the aristocratic municipality and the democratic commune, probably through the influence of the kings of England as dukes of Normandy and of Aquitaine, and in consequence of the commercial intercourse between the ports of the two duchies having familiarised the people of Guienne with the Norman institutions. In the province of Béarn even, where a race akin to the Basques of Spain clung tenaciously to their ancient customs (*fors*), the leading maritime town separated itself from its neighbours, and Bayonne accepted a charter from King John in A.D. 1215, constituting it a commune after the Anglo-Norman type. A ghild[1] of merchants and mariners was instituted at Bayonne shortly after the acceptance of this charter, and it appears from the statutes of this ghild, which were confirmed under the seal of the commune, that, at the time when they were drawn up, a very active trade was carried on at Rochelle, Bordeaux, Royan, and Oleron, as well as at Bayonne, with Flanders and Spain and

[1] This Ghild was entitled Societas Navium Bajonensium. Its statutes, which exist in the ducal library of Wolfenbuttel, have been published by M. Lappenberg, the archivist of the senate of the city of Hamburgh, and they have been printed by M. Pardessus in his Lois Maritimes, tom. iv., p. 283.

England. The Black Book of the Admiralty supplies evidence in the answers of the jurats summoned to the inquest held at Queensborough in A.D. 1375, that the trade of Bayonne, Bordeaux, and Rochelle had its well-established usages, but the trade with Oleron is not mentioned in those answers, and it may be presumed for other reasons that the commerce of Oleron had not kept pace with the advance of its more powerful neighbours; but, to whatever ports the mariners of the Duchy of Aquitaine conveyed the wines of Gascony or the salt of Poitou, they carried with them the maritime customs of their country, and as the most important of those customs had been embodied at an early period in the Judgments of Oleron, those judgments became known everywhere in the ports of the Atlantic and of the North Sea, and were translated into the languages which were in familiar use in those ports, and were in some countries adopted and circulated as the judgments of their own maritime tribunals.

The Customs of the Sea became known in like manner in the chief maritime ports of the Mediterranean. They were introduced from Barcelona first of all into Valencia, then into the Island of Majorca, then into Sicily, then into Roussillon, all of which countries were under the sceptre of the kings of Aragon, before any version of them was printed at Barcelona. Within half a century after they were printed in the Book of the Consulate of the Sea at Barcelona they were translated into the languages of Castile and of Italy. They were further translated into French before the conclusion of the sixteenth century, into Latin sometime in the seventeenth century, into Dutch at the beginning of the eighteenth century, and into German in the course of the same century. English and American jurists have equally regretted that no translation of the Customs of the Sea into the English language has ever been undertaken, except of a few chapters on the subject of maritime prize. The

Customs of the Sea will henceforth be accessible to English and American students in the language in which they were originally compiled, accompanied by an English translation of them, which the Editor has endeavoured to keep as close to the original Catalan text as the different idioms of the two languages would allow.

The Editor has selected the Customs of the Sea for publication in the present volume separately from the other contents of the Book of the Consulate of the Sea, inasmuch as they are of general application, and they constituted an important portion of the maritime customs of Europe in the fourteenth century. Unlike what precedes them in the order of arrangement of the printed Book of the Consulate of 1494, their authority does not rest on the edict of a law-giver, but is based on the *consensus gentium* by reason of their convenience and equity. The regulations, which were to govern the administration of the law in accordance with those customs in the maritime courts within the dominions of the kings of Aragon, formed a suitable introduction to the Customs of the Sea in the original Book of the Consulate, which was intended for the use of those courts, but they would be in some respects out of place in a compilation intended for the use of courts not bound to observe those regulations. Mr. Justice Story, however, in his able judgment in the well-known case of De Lovio v. Boit, 2 Gallison's Reports, p. 400, which contains a profound and comprehensive analysis of the subject matter of the Admiralty Jurisdiction, has appealed to those regulations as illustrative of the nature and extent of the maritime jurisdiction exercised by the consuls of the sea, which has been transmitted from them to the admiralty courts of the present day. "The courts," he says, "are described "as having jurisdiction of all controversies respecting "freight, or damages to goods shipped; of the wages "of mariners, of the partition of ships by public sale, "of jetison, of commissions or bailments to masters and

" mariners, of debts contracted by the master for the " use or the necessities of the ship, of agreements made " by the master with merchants, or by merchants with " the master; of goods found on the high seas, or on the " shore; of the armament or equipment of ships, gallies, " or other vessels, and generally of all other contracts " declared in the Customs of the Sea." As Mr. Justice Story's translation of this important chapter of the Valencian regulations has been made from the Italian version, which is not an accurate rendering of the original Catalan text, the Editor has subjoined the Catalan text in a note[1] from which it will be seen that the words " the partition of ships by public sale," used by Mr. Justice Story, do not accurately represent the meaning of the Catalan text, which should be rendered, " of part- " nership in ship-building, of sales by public auction." It is further laid down in a subsequent chapter of the same regulations that the consuls were to conform their decisions to the Customs of the Sea whenever they were applicable, and where the Customs of the Sea failed to supply a governing rule, they were to take counsel with the Prudhommes of the Sea. The retention of these regulations in the Castilian translation of the Book of the Consulate was reasonable, as that translation was intended for the use of the Consular Court at Valencia, which was bound by those regulations; on the other hand, their retention in the Italian translation, and subsequently in the French translation, may be readily accounted for, as they were calculated to afford to Italian and French merchants trading with ports within the

[1] Los consols determenen totes questions, que son de nolit, e de damnatge de robes que sien carregades en naus, de loguers de mariners, de part de nau a fer, de encantar, de fet de git, de comandes fetes a patro o a mariner, de deute degut per patro qui haia manlevat a ops e a necessari de son vexell, de promisio feta per patro a mereader, o de mereader a patro, de roba trobada en mar delivra o en plaia, de armaments de naus, galeres o lenys, e generalment de tots altres contractes, los quals en les costumes de mar son declarats.

dominions of the kings of Aragon, a knowledge of the procedure observed in the consular courts of those ports, before which they might happen sometime or other to be convened. The regulations are no longer of the same utility, but they are not without historical value, and M. Pardessus, in separating them from the Customs of the Sea, has wisely inserted them as a substantive document amongst the maritime laws of Catalonia and of Aragon in the fifth volume of his Lois Maritimes, p. 374.

The chapters on cruizers,[1] which follow immediately after the Customs of the Sea in the Book of the Consulate of A.D. 1494, are of less historical value than the Valencian Regulations, inasmuch as their provisions have not any international bearing, but are simply municipal usages, touching the order of duty on board of armed cruisers, and the distribution of prize between the owners and the officers and crews of the vessels. The Customs of the Sea, on the other hand, treat not merely of questions which may arise between merchants and the masters of vessels captured or embargoed in time of war, but of various questions which may arise between the owners of ships and the owners of cargoes, who may be of different nationalities, and which are incidental to the exercise of belligerent right, such, for instance, as questions of ransom (Ch. CLXXXV. and CLXXXVII.) questions of contribution for losses occasioned by the exactions of a belligerent (Ch. CCIII.); questions of participation in gain and loss, consequent on resistance to a belligerent cruiser (Ch. CCXLIII.); questions of damage arising from the non-fulfilment of contracts consequent on an embargo or a blockade (Ch. CXLVI., CXLVII., CCXXI., CCXXXVII.); questions of military salvage and of recapture (Ch. CCXLV.). They also treat of the

[1] These chapters belong to a period, when there was a chronic state of private war existing in the Mediterranean Sea, between the Saracen corsairs and the armed vessels fitted out by Christian associations expressly to pursue and capture them.

direct exercise of belligerent right on the high seas in the capture of merchant ships and their cargoes, and supply evidence that there was an established usage in the fourteenth century, that the goods of a neutral merchant, although they were embarked in an enemy's ship, should not be subjected to confiscation on the capture of the ship, and reciprocally, that a neutral ship laden with enemy's goods should be restored to its owners upon the delivery of the cargo to the captor, or upon conveying it to a port designated by the captor (ch. CCXXXI.).

It is not, however, so much with regard to the exercise of belligerent right on the high seas that the Customs of the Sea may be referred to with advantage. They are extremely instructive in relation to the ownership of ships and the rights and obligations of part owners; for the employment of a ship as a personal chattel, when it is vested in several part owners, may sometimes be a matter of controversy amongst them, and may give rise to disputes of some intricacy, for the settlement of which it has been the policy of maritime nations to provide a system of special rules, lest the ship should remain unemployed. Accordingly, we find it laid down in the Customs of the Sea, that if a ship is in need of repairs at the port where the part owners reside, if all of them upon notice consent that the ship should be repaired, the managing owner may repair the ship at the expense of all the part owners, and if any part owner fails to discharge his share of the expense, the managing owner may borrow the money on the share of the ship belonging to that part owner (Ch. cc.). A similar rule is upheld where a ship is in want of necessaries at the place where the part owners reside, and in cases of like emergency in a port where no part owner is resident, the managing owner is authorised to hypothecate the ship (Ch. cxciv.) at the risk of the lender. It likewise lays down rules touching the employment of a ship, where some of the

part owners dissent (Ch. clxxxiv.),[1] and touching the outfit of a ship under similar circumstances (Ch. ccxciv.). In fact it will be found that few cases of emergency can arise in the employment of a ship, for which provision has not been made in the Customs of the Sea.

A singular feature of the Customs of the Sea is the rule of contribution in the case of Maritime Jetison. The Roman Law and the Basilica valued the goods cast overboard at their cost price, and the goods preserved at their market price at the port of discharge. The Assises de Jerusalem valued both classes of goods at their cost price. The Judgments of the Sea valued both the goods cast overboard and the goods preserved on board the ship at the price, which similar goods would fetch at the port of discharge. The Customs of the Sea (Chap. lii.) had a shifting scale, according as half the voyage had been completed or not at the time of the jetison. In the former case the value of the goods cast overboard was to be measured by the market price of similar goods at the port of discharge, in the latter case by their cost price at the port of shipment. On the other hand, the Ordinance of King Peter IV. of Aragon of A.D. 1340, which is the first document printed in the Appendix to the Book of the Consulate of A.D. 1494, laid it down (Chap. xxviii. and xxix.) that the goods cast overboard and the goods preserved on board the ship should both be valued according to the market price of similar goods at the port of discharge, which was in conformity with the rule observed in the Judgments of the Sea and with the Maritime Laws of Pisa and of Marseilles. As this Ordinance was directed to be observed by every court within the dominions of the kings of Aragon, we must

[1] Mr. Justice Story seems to have overlooked this chapter, as he has observed in a note in his valuable work on Partnership, p. 662, that he had not discovered in the Consulate of the Sea any provisions on this subject.

either come to the conclusion that the Valencian Regulations, which required the Consuls of the Sea to observe the Written Customs of the Sea, were issued prior to this Ordinance, and were tacitly superseded by this Ordinance, as far as the Rule of Contribution in cases of jetison was concerned; or that the Customs of the Sea, as printed in the edition of A.D. 1494, are not altogether identical with "the Written Customs" referred to in the Valencian Regulations. The precise time, at which these Regulations were issued, cannot be determined further than that it was sometime between A.D. 1336 and 1343. It is admissible therefore to suppose that the Valencian Regulations were issued prior to 1340, and that as they were superseded by this Ordinance as far as the rule of contribution in cases of jetison was concerned, the Ordinance itself was annexed by way of supplement in the Appendix to the first printed edition of the Valencian Regulations and of the Customs of the Sea. The rule of the Customs of the Sea was probably a relic of an ancient system of valuation, of which traces are to be found in the maritime usages of Amsterdam, Enchuysen, and Stavern, and which according to one M.S. of those Usages was applied in cases of jetison, but according to another was confined to cases where goods were sold to procure necessaries for the ship.[1]

It has been already observed that the Book of the Consulate of the Sea was in all probability compiled by the scribe of the Consular Court for the use of the Consuls of the Sea, just as the Black Book of the Admiralty was compiled for the use of the Lord High Admiral, or of his lieutenant, who sat as his judge in the High Court of Admiralty. Under what circumstances any chapters of the Customs of the Sea were drawn up is not disclosed

[1] In Verver's version of these usages the word "werpen" or "cast overboard" occurs in ch. 33 and 34, whereas in the version published by Wagenaar the word is "verkopen" or "sold."

by their contents. Some of the earlier chapters are in a didactic form,[1] after the manner of the earliest French Coutumiers, such as Le Conseil de Pierre de Fontaines and Les Coutumes de Beauvoisie, and they have the air of having been drawn up by Prudhommes or magistrates practically skilled in the Customs of the Sea. Others appear to be of a consultative or deliberative character, "responsa prudentum" rather than "edicta magistratuum;" and there is one feature of the Customs of the Sea, which it has in common with the Black Book of the Admiralty, namely, some of the later chapters are amendments and amplifications of the earlier chapters. This circumstance is quite consistent with the hypothesis that they contain answers given from time to time by the Prudhommes of the Sea at Barcelona, upon consultation as to the usages of the sea in particular matters, and the Valencian Regulations disclose the fact, that it was the practice of the Consuls of the Sea, before pronouncing their decision, to consult the Prudhommes of the Sea, and the Prudhommes of the Merchants, and to give sentence in accordance with the advice of the Prudhommes of the Sea, if there should be any difference of opinion between the two bodies; and this practice is stated to have been in conformity with ancient usage. In the High Court of Admiralty of England it is the practice for the judge to be assisted by two of the Elder Brethren of the Trinity House of Deptford-le-Strond, whilst the registrar of the court, at a subsequent stage of the proceedings, has the assistance of two merchants.

The usages of maritime commerce, although they have been reduced into writing at very different epochs in different countries, exhibit a striking identity of character, which contrasts singularly with the great diversity, which is to be observed in the civil institutions of those countries. Two principal causes may have operated

[1] Chapters v., x., xvi., xxvii., xxviii., &c.

to bring about this result. In the first place the circumstances which gave rise to those usages were nearly identical in every country, and it was the interest of each country to be just in such matters, in order to secure reciprocity for its merchants and mariners in other countries. In the second place, at the time when the enterprises of the Italian Republics in the South and of the Hanse Confederation in the North were indirectly co-operating to bring about a great commercial revolution in Europe, merchants and mariners were left at liberty to set laws to themselves, and the usages of one locality were readily adopted by another, as soon as the superior convenience and equity of them were recognised. This result was greatly facilitated by a wise provision of the Visigothic Code, which was received in Spain and in the south of France, under which merchants from beyond the sea were allowed to have their disputes settled by their own judges according to their own laws.[1] On the other hand, the maritime usages of Southern Europe commended themselves at once to the acceptance of Northern Europe by their intrinsic convenience and equity, the more readily as the adoption of them was calculated to induce the merchants and mariners of the south to frequent the ports of the north. It may be thought by some that these ancient usages of the sea are institutions of the past, of which the study is profitless in the nineteenth century; but such was not the view of a great French jurist,[2] whose work on maritime assurance has been seldom quoted without approval on the part of the

[1] Cum transmarini negotiatores inter se caussam habuerint, nullus de sedibus nostris eos audire præsumat, nisi tantummodo suis legibus audiantur apud teloniarios suos. Lex Visigothorum, l. xi. tit. iii. v. ii. Waltheri Corpus Jur. German. tom. i. p. 628.

[2] Emerigon, the author of the Traité des Assurances et des Contrats à la grosse, Marseilles, 1783, undertook a translation into French of the Consulate of the Sea, which he completed as far as chapter clxxi. A copy of the MS. is said to be preserved at Paris in the Archives of the Department of the Marine.

Judges in Westminster Hall: "Researches into the "antiquities of this legislation," he writes, "will not "appear useless to those persons, who may have re- "marked that these ancient doctrines, of which many "are no longer in use, are nevertheless the foundations "of others which are in vigour in the present day, and "which it is consequently difficult to comprehend "thoroughly without having reference to the ancient "doctrines."

LIST OF MANUSCRIPTS COLLATED OR REFERRED TO IN THIS VOLUME.

The Judgments of the Sea.

Liber Memorandorum, in the Archives of the Guildhall of the City of London, 4to., vellum, early in the 14th century. This MS. contains various Ordinances and Charters, none of which are later than 15 Edw. II.

Liber Horn, in the Archives of the Guildhall of the City of London, 8vo., vellum, early in the 14th century. This MS. consists of two parts, the latter of which has an illuminated frontispiece, on which there is a Latin inscription reciting that the MS. belonged to Andrew Horn, fishmonger, of Bridge Street, London, and was completed under his direction in the fifth year of the reign of Edward II. This MS. contains various Charters and Ancient Customs of the City of London. The Judgments of the Sea are inserted in the latter part of the MS.

Bodley MS., 462. In the Bodleian Library, Oxford. 8vo., vellum, early in the 14th century.

Rawlinson MS. B. 356. In the Bodleian Library, Oxford. 8vo., vellum, 14th century.

Bruges MS., in the Archives of the City of Bruges, in the Maison de l'Ancien Greffe; paper, endorsed "Pri-

" velegien, Ceuren, Vredetractaeten, 1384 à 1440." Some of the documents in this MS. are of the first half of the 14th century.

MS. Français 5330, formerly No. 9846[4], in the Bibliothèque Nationale in Paris, paper, XV. century, small folio, 144 folios, entitled Coutumes de Normandie et d'Oleron. On the face of folio 105, at the top, are the words " Cy commencent les Droits dolleron," followed by twenty-four articles, the last of which finishes on the face of folio 107, in the middle of it, with the words " Explicit la Coustume dolleron." An Ordinance of Charles VI. of France immediately precedes the Customs of Oleron, commencing Carolus Dei gratia Francorum Rex, Parisiis a° MCCCC^mo octavo et Regni nostri xxviii. From an inscription in the MS. it appears to have formed part of the Colbert collection.

MS. Français 5967, in the Bibliothèque Nationale in Paris, entitled Ordonnances de la Vicomte de Leaue de Rouen, vellum, XV. century, small 12mo., 94 folios. At the top of folio 79 are the words "Cy commencent les " establissements des nefs de mer et des maistres et des " mariners comment ils se doyvent governer," followed by twenty-four articles, the last of which finishes on folio 94, about two thirds down the page, with the word " Amen." The MS. appears to have been once the property of M. Bigot.

The Customs of the Sea.

MS. Espagnol 124, in the Bibliothèque Nationale in Paris. It is described in the Ancient General Catalogue as "Fonds Cange, No. 114," and in M. Ulloa's Catalogue of Spanish MSS. in the Bibliothèque du Roi as "No. 103. Usatges de la Mar." It is a handsome MS. in double columns, the earlier part, including the Customs of the Sea, being written on paper of the fourteenth century, and in a hand of the same century. A fifteenth-

century hand takes up the chapters on Cruisers, which are commenced on fourteenth-century paper for a few folios, when paper of the fifteenth century succeeds, and is continued to the end of the volume, the last document being a Barcelonese Ordinance of A.D. 1436. The MS. is endorsed Coustumes de la Ville de Barcelone concernant la Marine, et diverses Ordonnances des Rois d'Aragon. A later hand has added the words "en langue Catalane."

MS. Espagnol 56, in the Bibliothèque Nationale in Paris. This MS. had in the Ancient General Catalogue the press mark "Anc. Fonds, No. 7805." It is entered in M. Ulloa's catalogue as "No. 121. Usatges de la Mar "en Catalan." It is written in double columns on paper of the early part of the fifteenth century, and it appears from a certificate on the face of folio 179, that it was executed under the superintendence of Peter Thomas, a public notary and the scribe of the Consulate of the Sea at Barcelona.

The Amalphitan Table.

MS. Foscarini 184, in the Imperial Library in Vienna, paper, small folio, XVI. century. It commences with a treatise entitled "Dell Origine di Longobardi et di "Normandi," being a chronicle of the dominion of the Lombards and Normans in Apulia. On p. 171 commences a document in 66 chapters, some of which are in Latin, but the greater part in Italian, and to which is prefixed the title "Capitula et Ordinationes Curiæ Mari- "timæ nobilis civitatis Amalfæ, quæ in vulgari sermone "dicuntur la Tabula de Amalfa." In a subsequent part of the same MS. are inserted the Ancient Municipal Customs of the City of Amalfi, drawn up in Latin, and headed "Incipiunt consuetudines Civitatis Amalphæ, "compilatæ et ordinatæ anno Domini millesimo decimo, "anno regiminis ipsius civitatis per ipsos Amalphi- "tanos."

The Maritime Law of Wisby.

MS. Dreyer 65, in the Archives of the City of Lubeck, paper, XVI. century. It contains the Code of the City of Lubeck, 18 articles on Civil Succession and the compilation of Sea-Laws, known as the Maritime Law of Wisby, which is headed "Hyr begynnet dat Water efte "See Recht." At the end is the colophon "Scriptum "et completum anno MDXXXIII."

The Maritime Law of Pisa.

MS. 1342. In the section of Libri Legali, in the Archives of the Chancery of the Commune of Pisa, vellum, semi-gothic characters, 82 folios. On the first page of the MS. is the title "Statuta Pisanæ Civitatis," in semi-gothic characters, and beneath it in modern cursive characters, "il presente libro e l'originale degli Statuti "Vecchi della citta di Pisa fatti nell' anno 1161." It contains the Constitutum Legis, in 49 chapters, followed by the Constitutum Usûs, also in 49 chapters, and to each division is prefixed a table of contents.

In conclusion the Editor has to express his thanks to M. Delisle, Director of the Bibliothèque Nationale in Paris and Member of the French Institute, for his courtesy in facilitating the Editor's collation of various MSS. in the Archives of that Library; to Sir Thomas Duffus Hardy, Knt., the Deputy Keeper of the Public Records, for his valuable counsel and assistance; to Edward Maunde Thompson, Esq., the Assistant Keeper of the MSS. in the British Museum, for his constant and ready aid on all occasions; and to Henry Cadogan Rothery, Esq., the Registrar of the High Court of Admiralty, and Henry Allen Bathurst, Esq., the Assistant Registrar, for their kindness in communicating to the

Editor the recovery of the Black Book of the Admiralty, and in placing it at his disposal for the purpose of collation. Two fac-similes of different portions of the text of the Black Book have been prefixed to the present volume in order to enable those readers, who are familiar with palæography, to form an independent judgment as to the identity or diversity of the handwriting of the earlier parts, which treat of subjects appertaining to the Court of the Lord High Admiral, as compared with the three last divisions, the subjects of which properly appertain to the Court of the Lord High Constable and the Earl Marshal.

LA CHARTRE D'OLEROUN DES JUGEMENS DE LA MEER.

THE CHARTER OF OLEROUN OF THE JUDGMENTS OF THE SEA.

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LA CHARTRE D'OLEROUN DES JUGEMENTZ DE LA MEER.

I. Liber Horn, . 358.

Ceo est la copie de la chartre Doleroun des jugementz de la meer.[1] Premierement lem fet un homme mestre dune nef. La nef est a deus hommes ou a trois. La nef sen part du pays dount ele est, et vient a Burdeaux, ou a la Rochele, ou aillours, et se freite a aler en pais estraunge. Le mestre ne poet pas vendre la nef, sill nad comaundement ou procuracioun des seigneurs, mes si il ad mestier de despenses,[2] il pout ben mettre ascunes des apparailes en gage par counseil des compaignouns de la nef, et ceo est le jugement en ceo cas.

The master may not sell the ship, but may pledge the ship's apparel to buy necessaries.

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[1] *de la meer*] The MS. from which the text is taken is contained in the Liber Horn, one of the most valuable of the MSS. preserved in the archives of the Guildhall of the city of London. Some account of it has been given in the Introduction to Vol. I., p. lix. It is the oldest known MS. of the Judgments of the Sea, with the exception of that contained in the Liber Memorandorum in the same archives, from which it seems to have been copied, as similar omissions occur in the text of both MSS., with this variation, that in the Liber Horn the omissions are made good in a more modern hand. The additions so made to the original text of MS. Horn have been enclosed by the Editor in brackets. This MS. is particularly valuable, as it confirms the opinion of those writers, who maintain that the Judgments of Damme were originally a Flemish adaptation of the Laws of Oleron.

[2] *des despenses*] These words are rendered in the Bruges MS. " van " vitaelgen," which according to Charpentier is the meaning of " de " despenses " in old French. The words " le vetaylle " are used in this sense in Vol. I., p. 400.

THE CHARTER OF OLEROUN OF THE JUDGMENTS OF THE SEA.

This is the copy of the Charter of Oleroun of the Judgments of the Sea.[1] First a man is made master of a ship. The ship belongs to two or three men. The ship departs from the country to which she belongs, and comes to Bordeaux[2] or to Rochelle or elsewhere, and is freighted to go to a strange country. The master may not sell the ship unless he has a mandate or procuration from the owners; but, if he has need of money for his expenses, he may put some of the ship's apparel in pledge upon consultation with the ship's company, and this is the judgment in this case. 1.

[1] *of the Sea*] There is extant in a MS. volume which is preserved in the archives of the city of Bruges, and is entitled Privilegien, Ceuren, Vredetractaten, A.D. 1384–1440, a series of twenty-four articles, which are headed "Dit es de Coppie van "den Rollen van Oleron van den "Vonnesse van der Zee," which is a Flemish translation of the Judgments of the Sea almost identical with the version of the Liber Horn. M. Warn-Koenig has published these articles in his work "Flandrische "Staats und Rechtsgeschichte," vol. i. Appendix, p. 86, and M. Pardessus has also published them amongst the maritime laws of Holland in his Lois Maritimes, tom. iv. p. 19. The judgments set out in the Bruges MS. are evidently the original of those, which were subsequently published in Flanders under the title of the Judgments of Damme.

[2] *to Bordeaux*] The Bruges MS. has the reading "ter Sluus of te "Bordeus," to Sluys or to Bordeaux. The mention of the port of Sluys, which is repeated in Articles IV., VIII., and XI., of the Bruges MS., assists us to determine the date of it, as Lammens-Vliet or Lambins-Vliet, a port on the Zwyn, which became famous as the port of Bruges and of Damme in the fourteenth century, did not acquire the name of Sluys before 1316 A.D.

II. The master is bound to take counsel with the ship's company whether he shall sail or not.

Une nef est en une havene et demoere pur attendre soun temps, et quant vient a soun partir, le mestre deit prendre counseil ove ses compaignouns, et lour dire, Seignurs, vous avez cest temps; ascun y aura, qe dirra le temps nest pas bon, et ascuns, qe dirrount le temps est bel e bon. Le mestre est tenuz de ceo acorder ove les plus des compaignouns. Et sil fet autrement, le mestre est tenu a rendre la nef et les darrees si il emperdrount,[1] et cest le jugement en ceo cas.

III. The duty of the master and of the mariners in case of shipwreck.

Une nef sempert en ascun teres ou en quel leu qe ceo soit, les mariners sount tenu a sauver le plus qil purrount; et sil aident, le mestre est tenu a engager,[2] sil nad deniers, de ceo qil sauverount, e les remener a lour teres; et sil ny aident, il nest tenuz de rens lour bailer, ne de ren les pourveier, ainz perdent lour lowers quant la nef est perdu. Et le mestre nad nul poer de vendre apparailes de la nef, sil nad comaundement ou procuracioun des seignurs, mes les deit mettre en sauve garde desques al taunt qil sache lur volunte. Et si doit fere a plus loialment qil pourra. Et si le feseit altrement, il est tenu damender sil ad de quei. Et ceo est le jugement en ceo cas.

IV. In case of shipwreck the master may carry forward the goods in another ship.

Une nef se part de Burdeux[3] ou ailours, il avient ascune foiz qele sempire, lem sauve le plus, qe lem peut, des vins et des autres derrees, les merchaunz [et

[1] *si il emperdrount*] The Bruges MS. agrees with MS. Horn in omitting the words "s'il a de quoi," with which this article concludes in the Black Book.

[2] *a engager*] The Bruges MS. has no words equivalent to the sentence "il est tenu a engager." M. Pardessus is of opinion that this is attributable to negligence on the part of the scribe, but the same omission occurs in Werver's text of the Judgments of Damme.

[3] *de Burdeux*] The Bruges MS. substitutes here the words "van der "Sluus," from Sluys.

A ship is in a haven, and stays to await her time,[1] and the time comes for her departure, the master ought to take counsel with his companions and to say to them, "Sirs, you have this weather." There will be some who will say the weather is not good, and some who will say the weather is fine and good. The master is bound to agree with the greater part of his companions. And if he does otherwise, the master is bound to replace the ship and the goods, if they are lost, and this is the judgment in this case. 2.

If a ship is lost in any land or in any place whatever, the mariners are bound to save the most that they can; and if they assist, the master is bound, if he have not money, to pledge[2] some of the goods which they have saved, and to convey them back to their country; and if they do not assist, he is not bound to furnish them with anything nor to provide them with anything, on the contrary they shall lose their wages, when the ship is lost. And the master has no power to sell the apparel of the ship, if he has not a mandate or procuration from the owners, but he ought to place them in safe deposit, until he knows their wishes. And he ought to act in the most loyal way that he can. And if he acts otherwise, he is bound to make compensation, if he have wherewithal. And this is the judgment in this case. 3.

A ship departs from Bordeaux or elsewhere; it happens sometimes that she is lost, and they save the most that they can of the wines and the other goods. The mer- 4.

[1] *her time*] The Bruges MS. has the reading "tyd ende wind," which is a variation from all the English MSS.

[2] *to pledge*] The text of the Bruges MS. is to this effect, "and if he "have not money, out of that "which they have helped to save "he is bound to bring them back "to their country." This would imply a power on the part of the master to sell the goods in order to procure means to carry the mariners back to their port of departure.

le mestre] sount en graunt debat, et demaundent les marchaunz de mestre avoir lour deniers,[1] ils les deyvent bien aver, paiaunt lur fret de taunt come la nef ad fet de veyage, sil plest al mestre. Et si le mestre voet, il poet bien adubber sa nef, sil est en cas qil la puisse adubber prestement, et si noun, il poet lower un autre nef a fere la veiage, et aura le mestre soun fret de taunt come il aura des darres sauvez par ascune manere. Et ceo est le jugement en ceo cas.

V. Mariners may not go ashore in harbour without the master's leave.

Une nef se part de ascun port charge ou voyde, et aryve en ascun port, les mariners ne deyvent pas issir hors saunz conge de mestre, qar si la nef senperdoit par acun aventure, a dunc il serrount tenez a amender, [sils ont de quei, mais si la nef estoit en lieu, ou elle se feust amaree de quatre amarees, ils pourront bien issir hors][2] et revenir par temps a lour nef. Et ceo est le jugement en ceo cas.

VI. Mariners who go ashore, unless in the service of the ship,

Mariners se lowent ou lour mestre, et acuns deux sen issent saunz counge hors, et senyveront et fount contekes,[3] et en y ha acuns qi sount naufres, le mestre nest pas tenuz a eux fere garir, ne a les pourveier de ren, einz les poet ben mettre hors, et lower un

[1] *deniers*] This word is clearly an error of the scribe of the Liber Memorandorum, from which it has found its way into the Liber Horn and into the Rawlinson MS. in the Bodleian Library at Oxford. "Dar-" res" is the reading of Bodley MS. 462, which is an early MS. of the fourteenth century, and the Bruges MS. has the equivalent words "haer goed." "Leurs den-" rees" is the reading of the Black Book.

[2] *issir hors*] The original text of MS. Horn is here evidently defective, equally with that of the Liber Memorandorum, but the words, which the Editor has included within brackets, have been added in the Liber Horn in a more modern hand.

[3] *fount contekes*] The Bruges MS. has the phrase "maken con-" tent," which is evidently the French phrase in a Flemish dress.

chants and the master are in great dispute, and the merchants claim from the master to have their goods. They may well have them, paying their freight for such part of the voyage as the ship has made, if it pleases the master. And if the master wishes, he may properly repair his ship, if she is in a state to be speedily repaired; and if not, he may hire another ship to complete the voyage, and the master shall have his freight for as much of the cargo as has been saved in any manner.[1] And this is the judgment in this case.

5. A ship departs from a port laden or empty, and arrives in another port; the mariners ought not to go ashore without the leave of the master; for if the ship should be lost from any accident, in such a case they would be bound to make compensation [if they have wherewithal. But if the ship is in a place where she has been moored with four hawsers, they may properly go ashore,][2] and return in time to their ship. And this is the judgment in this case.

6. Mariners[3] hire themselves out to their master, and some of them go ashore without leave, and get drunk, and make a row, and there are some who are hurt; the master is not bound to have them healed, nor to provide them with anything;[4] on the contrary he may

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[1] *in any manner*] The Bruges MS. agrees with the MS. Horn in concluding the fourth article with the words "in any manner," and the Black Book does the same. An addition was made to the article in France, which has found its way into Garcia's and Cleirac's enlarged version of the Rolls of Oleron, see Vol. II., p. 437.

[2] *go ashore*] The text of the Bruges MS. has words equivalent to those, which the Editor has inserted in brackets. They are found in Bodley MS. 462, and were received in England at the time when Liber Horn was compiled.

[3] *Mariners*] The Bruges MS., which is followed by the various Flemish MS. of the Judgments of Damme, is peculiar in this respect, that this article begins "Het ghe- "valt, dat sciplieden." "It happens, "that mariners."

[4] *with any thing*] The Bruges MS. agrees here with MS. Horn and

and are hurt, must be cured at their own expense.

autre en lieu de li, et sil couste plus qe celui, il le deit paier, si le mestre troeve ren de soen. Mes si [le mestre] lenvoye en ascune service de la nef par soun comaundement, et sil se blessat ou le naueste, il deit estre garries et sauvez sus le coustes de la nef. Et ceo est le jugement en ceo cas.

VII. A sick mariner must be placed on shore in care of a nurse, and if he dies, his wages must be paid to his wife or relatives.

Il avient qe maladie emprent a un des compagnouns, ou a deus, ou a troys, [en fesant lur service de la nef,][1] et il ne pôet pas taunz estre malades en la nef, le mestre le doit mettre hors, et li quere un hostiel, e li bailer crescet ou chaundeile, et li bailer un de ses valles de la nef por li garder, ou lower une femme qe prenge garde a li. Et li deit pourveier de tele viaunde come len use en la nef, cest assavoir de taunt come il prist en saunte, et ren plus, si ne li plest. Et sil voet avoir viaundes plus deliciouses, le mestre nest pas tenuz a li quere, sil ne soit a ses despenses;[2] et la nef ne doit pas demorer por li, einz se deit aler. Et sil garist, il deit avoier soun lower tut alonc; et sil moert, sa femme ou ses prives deivent avoier pur li. Et ceo est le jugement en ceo cas.

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[1] *en fesant lur service de la nef*] These words, which are part of the text of the Black Book, have been added in MS. Horn. They were doubtless omitted by the negligence of the scribe, as their equivalents, "blivende in den dienst van den "scepe," are found in the Bruges MS.

[2] *a ses despenses*] The Black Book has "a ses despences du mariner." The Bruges MS. has "es "si met tsinen costen," which agrees with MS. Horn, whereas the majority of the MSS. of the Judgments of Damme have the words "hy en "sy op's meesters costen," or "se "en weren up des meisters kost," "unless it be at the cost of the "master," which is evidently at variance with the rest of the article.

properly put them ashore, and hire others in their place; and if the others cost more than they did, they ought to pay, if the master can find anything of theirs. But if the master sends a mariner on any service of the ship by his order, and the mariner wounds himself or is hurt, he is to be healed and maintained at the cost of the ship. And this is the judgment in this case.

It happens that sickness attacks one of the ship's company, or two or three, and the sick man can do nothing in the ship as he is so ill; the master ought to put him ashore, and seek a lodging for him, and furnish him with tallow or a candle, and supply him with one of the ship's boys to tend him, or hire a woman [1] to nurse him; and he ought to provide him with such food as is used in the ship, that is to say, with as much as he had when he was in health, and nothing more, unless he pleases. And if the sick man wishes to have more delicate food, the master is not bound to find it, unless it be at his expense; and the ship ought not to delay her voyage for him, on the contrary she should proceed on it; and if he should recover, he ought to have his wages for the whole voyage; and if he should die, his wife or his near relatives [2] ought to have them for him. And this is the judgment in this case. 7.

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with the Black Book, whilst in Verwer's version of the Judgments of Damme the words "op des scheeps "kosten," are added, which are not found in any English or French MS. of the Judgments of the Sea.

[1] *or hire a woman*] This alternative is not prescribed in the Bruges MS., nor in any MS. of the Judgments of Damme, nor is it found in the Castilian version of El fuero de Layron.

[2] *his wife or his near relatives*] The Bruges MS. slightly varies, having words which may be rendered "his wife or his children "ought to have them as his heirs."

VIII. The master in case of danger may make a jetison. How the jetison is to be shared between the ship and the cargo.

Une nef charge a Burdeux ou aillors, et avient chose qe torment la prent en la meer, et qil ne poent eschaper saunz jettre darres et des vins; le mestre est tenu de dire as marchaunz, "Seignurs, nous ne pouns "eschaper sanz gettre des vins ou des darres;" les marchauns si en y a respoundrent lour volunte et greent bien le getisoun par aventure,[1] les resouns del mestre sount plus cleres; et sil ne greient, le mestre ne doit pas lesser pur ceo qil ne jette taunt qil verra que bien soit, jurauntle tiers de ses compaignouns sur les seintz evangelies quant il serra venuz a sauvete al terre, qil ne fesoit mes por sauver les corps et la nef et les darres et les vins; cels qi serrount gete hors deyvent estre aprisagez a foer de ceux qe serrount venuz a sauvete, et serrount venduz a partiz livere a livere entre les marchauntz; et y doit le mestre partir acountre la nef ou soun fret a soun chois por estorer le damages; les mariners deyvent avoir [chacun] un tonel fraunk, et lautre deyvent partir au get[2] solonc qui le avera, si defent en la meer come un homme; et sil ne defent, il ne aura rens de fraunchise, et en serra le mestre cru por son serment. Et ceo est le jugement en ceo cas.

[1] *par aventure*] This is the reading of all the English MSS., and the Bruges MS. has "bi aventuren." The text of the other MSS. of the Judgments of Damme is a paraphrase rather than a translation of the text of the Rolls of Oleron. The words "par aventure" are omitted in the Breton version of the Rolls, but they are found in the Black Book. M. Pardessus considers "par aventure" to be an interpolation of a copyist founded on a misapprehension, but the phrase is perfectly intelligible.

[2] *partir au get*] The rule of contribution on the part of the mariners in the ports of the Mediterranean is stated in the Consolat de Mer, ch. lxxxvi. and lxxxvii.

A ship loads at Bordeaux,[1] or elsewhere, and it happens that a storm catches the ship at sea, and that she cannot escape without casting overboard goods and wines; the master is bound to say to the merchants, "Sirs, we cannot escape without casting overboard "wines or goods;" the merchants, if there are any, answer as they will, and agree readily to a jetison on the chance,[2] since the reasons of the master are most clear; and if they do not agree, the master ought not to give up for that reason casting overboard as much as he shall see fit, swearing himself and three of his companions upon the Holy Evangelists, when he has arrived in safety on shore, that he did not do it, except in order to save the lives and the ship and the goods and the wines. Those which are cast overboard ought to be appraised at the market price of those which have arrived in safety, and shall be sold and shared pound by pound amongst the merchants; and the master ought to share in the reckoning his ship or his freight at his choice, to reimburse the losses; the mariners ought to have a ton free, and the rest they ought to share in the jetison, according to what they shall have on board, if they conduct themselves[3] as men on the sea; and if they do not so conduct themselves, they ought not to have any exemption, and the master shall be believed on his oath. And this is the judgment in this case. 8.

[1] *loads at Bordeaux*] The commencement of this article in the Bruges MS. varies somewhat from MS. Horn, and rather accords with the Black Book, with the exception of the substitution of Sluus for Bordeaux. "Een scip vaert van der "Sluus," a ship sails from Sluys.

[2] *on the chance*] The Editor is disposed to regard the phrase "par "adventure," as a technical phrase corresponding to "a ventura," which is used in the Consolat del Mar to denote regular or ordinary jetison made on the chance of saving the ship and the remaining cargo, as distinguished from jetison made under circumstances of impending wreck, where a different rule of contribution was applicable.

[3] *they conduct themselves*] This rule proceeds on a more primitive principle than that which is set forth in the Consolat del Mar, ch. cxxxvii.

IX. If the master has to cut away his mast, he is to be compensated, as in a case of jetison.

Il avient qun mestre dune nef coupe soun mast par force del temps; il deit appeller les marchauntz e lor monstrer qil convient couper le mast pur sauver la nef et les darrees; et ascune foiz avient qe len coupent cables et lessent auncres pur sauver la nef et les darres, ils deyvent estre countez livere a livere, com get, et il deyvent partir les marchauntz e paier saunz nul delai tot avaunt qe les darres serrount mises hors de la nef; et si la nef estoit en dur sege, et le mestre demorast pur lur debat et yl y eust corisoun,[1] le mestre ne doit partir, einz si doit avoir soun fret come des autres darres, qi sount sauvez. Et ceo est le jugement en ceo cas.

X. The quality of the ropes, used for hoisting the cargo, ought to be approved by the merchants.

Un mestre dun nef vint a sauvete a sa descharge; il deit monstrer as marchaunz les cordes ove quei il guidera; et sil veit qil a amender, le mestre[2] est tenuz a les amender, qar si le tonel se pert par defaute de guide ou de cordage, le mestre est tenuz al amender, luy et ses mariners, et il deyt partir le mestre por taunt qil prent en gunyndage, et deit le gunyndage estre mys a estorer le damage premerement, et le remenaunt[3] doit estre parti entre eux. Mes si cordes rumpent sanz ceo quil eust monstre as marchaunz, ils serrount tenu a rendre tut le damage. Mais si les marchaunz dient, qe les cordes soient beles et bones,

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[1] *corisoun*] This is the reading of the Black Book and of the best English MSS., and it is confirmed by the Bruges MS., which has "ende der yet gheleken ware," "viz., "and there should be "leakage." In the Breton MS. the word "coullaison" has been adopted, which has the same meaning. The corruption into "collu- "sion," in Cleirac's version has been stated in a note to Vol. I., p. 101.

[2] *le mestre*] The words "le mes- "tre est tenuz a les amender, qar "si le tonel se pert par defaute de "guide ou de cordage," are omitted in the Black Book by error of the scribe, but their equivalents are found in the Bruges MS.

[3] *et le remenaunt*] The Bruges MS. has borrowed this phrase and clothed it in a Flemish dress, "ende "tremanand."

It happens that the master of a ship has to cut his mast from stress of weather; he ought to call the merchants, and show them that it is expedient to cut the mast to save the ship and the goods; and sometimes it happens that cables are cut and anchors abandoned to save the ship and the goods; they ought to be reckoned pound by pound, as in jetison; and the merchants ought to share and pay without any delay everything, before the goods are landed from the ship; and if the ship should be on hard ground, and the master tarries for their dispute, and there shall be leakage, the master ought not to share in it, on the contrary, he ought to have his freight as of the other goods[1] which are saved. And this is the judgment in this case. 9.

A master of a ship comes in safety to his place of discharge; he ought to show to the merchants the ropes with which he will hoist; and if he sees anything to mend, the master is bound to mend them, for if a tun is lost by fault of the hoisting or of the ropes, the master is bound to make compensation, he and his mariners; and the master ought to share all that he receives for the hoisting, and the hoisting ought to be reckoned in the first place to replace the losses, and the residue ought to be shared amongst them.[2] But if the ropes break without his having shown them to the merchants, he and his mariners will be bound to make good all the damage. But if the merchants say that the ropes 10.

[1] *as of the other goods*] The text of the Bruges MSS. is "sine vrecht "der of, ghelyc den andren," viz. "his freight of them, like of the others," which is probably an older reading that that of the Black Book, "son frette de ceulx vins comme il "prendra des autres."

[2] *amongst them*] These words in the Editor's opinion ought to be interpreted as meaning "amongst "the merchants and the master and "mariners," but M. Pardessus holds them to mean "amongst the master "and the mariners."

et ils rumpent, chascun doit partir au damage, cest assavoir les marchaunz a qi les vins serrount, tant soulement.[1] Et ceo est le jugement en ceo cas.

XI. To what extent the master is liable to make compensation for damage to the cargo from careless stowage.

Une [nef] charge a Burdeux, ou aillours, et leve sa voille pur arriver ses vins,[2] et sen part, et na fient pas le mestre et les mariners lor boucle sicome ils dussunt, e les prent mal temps en la meer en tele manere, qe la fustaille de leyns[3] enfoundre ou tonel ou pipe, la nef vient a sauvete, les merchaunz dient qe lur fustaille ad les vins perduz; le mestre dit qe noun fist; si le mestre poet jurer li et ses trois compaignouns, ou quatre de ceux qe les marchaunz eslirent, qe les vins ne se perdirent pas par lur fustaille, come les marchaunz lur mettrent sus, ils en deyvent estre quittes et deliveres; et sil ne voillent jurer, il deivent rendre as marchaunz lur damages, qar ils sount tenuz a affier lour boucles et lour elores bien et certainement avant qil se deyvent partir del lieu ou il se chargent. Et ceo est le jugement en ceo cas.

XII. The penalty

Un mestre lowe ses mariners et les doit tenir en pees, et estre lor juge, si il ia nul qi endomage

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[1] *tant soulement*] The Bruges MS. has a different reading, "ghe- "meenlike," "communement," which is peculiar to it. The Black Book accords with MS. Horn.

[2] *leve sa voille pur arriver ses vins*] The Bruges MS. observes a different order, with a slight variation of the words "Een scip is ter Sluus "iof eldre omme win te ledene, ende "vaerd van danen." "A ship is at "Sluys or elsewhere to load wine, "and sails thence."

[3] *la fustaille de leyns*] The Black Book has the reading "leur fus- "taille de dedens," the meaning of which accords with that of the Bruges MS. "die fustaillie ende tie "sloten," "the casks within the "hatches."

are fair and good, and they break, each ought to share the loss, that is to say, the merchants, to whom the wines belongs, so much alone. And this is the judgment in this case.

A ship loads at Bordeaux, or elsewhere, and hoists sail to convey her wines,[1] and departs, and the master and mariners do not fasten as they ought their bulkheads, and bad weather overtakes them on the sea in such manner, that the casks within the ship crush either a tun or a pipe; the ship arrives in safety, and the merchants say that the casks have destroyed their wines; the master says that it is not so; if the master can swear himself and three of his companions, or four of those whom the merchants have chosen, that the wines were not destroyed by the casks, as the merchants stowed their wines above the waterline, they ought to be quit; and if they are not willing to swear, they ought to make good to the merchants all their damage, for they are bound to fasten well and surely their bulkheads and their hatches,[2] before they depart from the place where they have loaded. And this is the judgment in this case. 11.

A master hireth his mariners, and he ought to keep them in peace, and be their judge, if there is 12.

[1] *hoists sail to convey her wines*] Such is clearly the reading of MS. Horn, which agrees with the Black Book. The text which has been followed by the scribe of the Bruges MS. must have had the words "pour arrimer ses vins et leve sa "voille."

[2] *their hatches*] The word "elores" which is also the reading of the Black Book, has been here adopted by the scribe of the Bruges MS., under the Flemish form of "elloren. The Editor has observed in a note to Vol. II. p. 225, that the word "elloren" is probably synonymous with the word "sloten;" but the latter word occurs twice in this article of the Bruges MS. as if it signified something not quite identical with elloren. Cleirac, in his interpretation of marine terms writes "Les ouvertures du Tillac "pour descendre au dessous sont "nommées illoires, escoutes, es-"coutilles."

for abusive language and for blows on board ship.

lautre, par quei il met payn et vin a table, celi qi dementera lautre deit paier iiij. *d.* Et le mestre, sil demente nul, deit paier viii. *d.* Et si il a nul qi demente le mestre, il deit paier atant come le mestre. Et si ensi est qe le mestre enferge un de ses mariners, il doit attendre le premiere colee, come de poin ou de paume, et sil le fiert plus, il se deit defendre. Et si le mariner fert le mestre premier, il doit perdre cent soulx,[1] ou les poins al chois de mariner. Et ceo est le jugement en ceo cas.

XIII. Harbour pilotage is payable by the owners of the cargo.

Une nef frette a Burdeux en la Rochelle ou aillours, et vient a sa descharge et sont chartre partie,[2] towage et petites lodmannage sunt sur les marchaunz, e la coste[3] de Bretaigne touz ceux qe lem prent puis qe lem ad passe les debatz ou sount petitz lodmaunz, et ceux de Normaundie et Dengleterre puis qe lem passe Caleys, et ceux Descoce puis qe lempasse Gerneseye, et ceux defflaundres puis qe lempasse Caleys, e ceux Descoce puis qe lem passe Gernemue. Et cest le jugement en ceo cas.

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[1] *cent soulx*] This is beyond doubt the correct reading in preference to that of the Black Book, which reads "cinq soulx." The Bruges MS. reads "C sol. iof die vuust," but it has no words giving an option to the mariner corresponding to "al "chois de mariner," which is the reading of all the English MSS. "Cent sols" is the penalty imposed by the Ordinances of the Magistrates of Barcelona of A.D. 1435, upon mariners who quit their ship without leave of the master.

[2] *chartre partie*] The Bruges MS. reads "ende maker charte-partie," which is the original reading of the Rolls, but the scribe of the Black Book has omitted altogether the words "et font chartre partie." The Bruges MS. has "ledmanage" simply, instead of "petites lod-"mannages."

[3] *e la costē*] The Bruges MS. reads "ande Coste," which agrees with the Black Book.

any one who hurts another, whilst he puts bread and wine on the table; he who shall give the lie to another, ought to pay fourpence. And the master, if he gives the lie to any one, ought to pay eightpence; and if any one gives the lie to the master, he ought to pay as much as the master. And if it be so that the master strikes one of his mariners, the mariner ought to abide the first blow, whether it be of the fist or of the palm of the hand; and if he strikes him again, the mariner may defend himself. And if a mariner strikes the master first, he ought to lose a hundred shillings or his fist at the choice of the mariner. And this is the judgment in this case.

13. A ship is freighted at Bordeaux, or at Rochelle, or elsewhere, and arrives at her place of discharge, and has a charter-party, towage and harbour pilotage[1] fall upon the merchants. On the coast of Brittany all those whom they take after they have passed "L'isle de Bas"[2] are harbour pilots, and those of Normandy and of England [after they have passed Calais, and those of Scotland][3] after they have passed Guernsey, and those of Flanders after they have passed Calais, and those of Scotland after they have passed Yarmouth. And this is the judgment in this case.

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[1] *harbour pilotage*] Petit Iomant is defined in the Coutume of the Commune of Oleron, ch. lxxxvii., as "home que loget a l'entree daus "pors et daus avres sevant dau "dangers daus pors et daus ha-"vres," vol ii., p. 384.

[2] *L'isle de Bas*] This island lies off the coast of Britanny, but the scribes of the English MSS. seem not to have been acquainted with it any more than the scribe of the Bruges MS., who has written "die "de Bats." Such an error leads rather to the inference that the Bruges MS. was copied from an English MS., and not from a Breton MS., as the Breton MSS. are for the most part correct in reading l'isle de Bas. The Black Book has "les debitez."

[3] *after they have passed Calais, and those of Scotland*] The corresponding words in MS. Horn are clearly an interpolation which is without meaning. The Bruges MS. omits them, whilst they are found in all the English MSS.

XIV. Disputes on board ship between the master and the mariners.

Contek[1] si fet en un nef entre le mestre et ses mariners. Le mestre doit ouster la towaile devaunt ses mariners trois foiz, avant qil les menge hors. Et se le mariner ofre a fere les amendes a la garde des mariners qi sount a la table, et le mestre soit taunt cruel qil ne voile ren fere, e le met hors, le mariner se poet aler et suire la nef desques al descharge. Et tout aver autresi son lower, come il venu de deinz amendaunt la forfeit a la garde de la table. Et si einsi soit qe le mestre neust[2] autresi bon mariner come li en la nef, et la perde por ascun aventure, le mestre est tenu de rendre le damage de la nef et de la marchaundise qil y serra, sil ad de quei. Et cest le jugement en ceo cas.

XV. Damage done to a ship at her moorings by another ship entering the port.

Une nef est en une cuvers[3] amarre et hastant de sa marree,[4] un autre nef crest en sa pees. La nef est a damage du coup qe lautre li donne, e ya des vins enfoundres dascuns, le damage doit estre prisagez et parti moite entre les deux nefs. Et les vins qi sount de deinz les ii. nefs deivent estre partiz, pur le damage entre les marchaunz. Le mestre de la nef, qe ad feru lautre, est tenuz a jurer lui et ses mariners, qil ne firent pas de gre; et est resoun par quei cest jugement est fait, se est qe une veille nef se mist

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[1] *Contek*] The Bruges MS. has here, as in Article VI., the introductory words "Het ghevalt dat," "It happens that," and instead of "Contek" the word "Debaet" is used in the Bruges MS., and is peculiar to it.

[2] *neust*] The reading in MS. Horn is "vrne," which is perhaps careless writing. The Editor has adopted the reading of the Liber Memorandorum, which is also the reading of the Black Book.

[3] *cuvers*] The Bruges MS. has the reading "comens," which Warnkoenig considers to be a Flemish word signifying "a basin." Boxhorn in his version of the Judgments of Damme adopts another form, "coveers." Both forms are most probably derived from the French word, which is here written "cuvers," and in the Black Book "convers."

[4] *hastant de sa marree*] The Black Book has "estant a sa maree." Probably "a s'amaree," "at her "anchorage," would be the correct form.

Contention[1] arises on board of a ship between the master and his mariners. The master ought to take away the napkin from before the mariners three times before he sends them out of the ship. And [if] the mariner offers to make amends according to the award of the mariners who are at the table; and [if] the master is so cruel that he will not do any thing, and he puts him out of the ship, the mariner may go and follow the ship up to her port of discharge, and have all his wages, as if he had come on board the ship, making amends for his fault according to the award of the mariners. And if it be so, that the master has not another mariner as good on board the ship, and it is lost through any accident, the master is bound to make good the damage of the ship and of the merchandise which may be in it, if he have wherewithal. And this is the judgment in this case. 14.

A ship is in a roadstead moored and riding at her mooring, and another ship strikes her when she is at rest. The ship is damaged by the blow which the other has given her, and there are some wines stove in; the damage ought to be appraised, and divided by halves between the two ships. And the wines which are in the two ships ought to be halved for the damage between the merchants. The master of the ship, which has struck the other, is bound to swear, himself and his mariners, that he did not do it intentionally; and the reason why this judgment was made, is, that it may happen that a vessel would willingly place herself in the way of a better ship, if she were 15.

[1] *Contention*] The Consolat del Mar, ch. cxviii. gives more discretion to the master in case of a quarrel with a mariner; but it is required in chap. ccxxii. of the Cousolat that the master should give the mariner warning, in like manner as enjoined here, by taking away the bread and meat on the table from before him.

volunters en la voie a une meilure, si ele [eust] touz ses damages por quider aver lautre nef. Mes quant ele siet qele doit partir la moite, ele se voit volunters de la voie. Et cest le jugement en ceo cas.

XVI. A ship ought not to anchor too near another ship in havens of shallow water. Buoys to be placed over anchors.

Une nef ou deux ou plus sunt en une havene, ou il i a poi de ewe, et a secche un des nefs et est trop pres del autre. Le mestre de cele nef deit dire as autres mariners, "Seignurs, levez vostre auncre, qe "ele est trop pres de nous et purroit fere damage," et eux ne la voilent lever, le mestre por li et ses compaignouns la vount lever et esloigner de li. Et sil tolent a lever, et l'autre[1] lur fet damage, ils sount tenuz al amender tut a lounc. Et si ensi estoit qil y eust mis ancre saunz boye, et il fount damage, il sount tenuz al amender tut alounc. Et sils sount en une havene qe asseche, il sount tenuz al amestre balinges et ancres qe ne parigent au plein. Et cest le jugement en ceo cas.

XVII. What diet the mariners of Britanny and of Normandy ought to have.

Les mariners de la costere de Bretaigne ne deivent aver qe une quisine le jour, par la resoun qil ount beverage en alaunt et en venaunt. Et ceux di Normandie endeyvent aver deux le jour, par la resoun qe lour mestre ne lur baille qe ewe al aler. Mes puis qe la nef est en la terre ou le vin crest,[2] les mariners deyvent avoir beverage, et lor deit le mestre quere. Et cest le jugement en ceo cas.

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[1] *et l'autre*] These words are repeated a second time in MS. Horn by an error of the scribe. The reading of MS. Horn is probably not so correct as regards the entire sentence, as the reading of the Black Book. The text of the Bruges MS., "en zy ne willens niet doen," is more simple, but the reading of the subsequent part of the article is diffuse.

[2] *ou le vin crest*] The Bruges MS. here follows the English MSS. very closely, and has the words "daer "de wyn groeyt."

to have all her damages made good from having struck the other ship. But when she knows that she ought to share the damage of both by halves, she willingly places herself out of the way. And this is the judgment in this case.

16. A ship and divers other ships are in a haven, where there is little water, and one of the ships dries and is too near the other. The master of this ship ought to say to the other mariners, "Sirs, you should raise "your anchor, for it is too near us, and may do us "damage;" and if they will not raise it, the master for himself with his companions may proceed to raise it and remove it to a distance from them. And if they fail to raise it, and the anchor does them damage, the others are bound to make compensation thoroughly. And if it should be that they have let go an anchor without a buoy, and it does damage, they are bound to make compensation thoroughly. And if they are in a haven which dries, they are bound to put floats to their anchors, that they may appear above water. And this is the judgment in this case.

17. The mariners of the coast of Brittany ought to have only one cooked meal a day, by reason that they have drink going and coming. And those of Normandy ought to have two a day, by reason that their master only supplies them with water in going. But when the ship arrives at the land where the wine grows,[1] the mariners ought to have drink, and the master ought to find it. And this is the judgment in this case.

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[1] *where the wine grows*] This phrase is omitted in the Rutter of the Sea, vol. ii. p. 111.

XVIII. What freight shall be allowed to the mariners.

Une nef arive a sa charge a Burdeux ou aillours. Le mestre est tenuz a dire a ses compagnouns, "Seig- " nurs, frettere[z] vous a marrees ou lieveres a fret de la nef; il sount tenuz a respoundre le quel il ferount. Et si il elysent al fret de la nef, tiel fret come la nef avera il averount. Et sil voillent fretter par eux, il deyvent fretter en tele manere, qe la nef ne soit demoraunte. Et si il aviegne qil ne troevent fret, le mestre nad nule [blame]. Et il doit le mestre monstrer lour rives et lour leire,[1] et il doit le mettre penser de lur mariage chescun. Et si il voilent mettre tonel de ewe [et] soit gette en la meer, il doit estre counte pur vin ou pur autre darres livere a livere, si les mariners se peussent defendre resonablement en la meer. Et si ensi est, que eux se fregettent as merchaunz [tiels franchise[2] come les mariners auront doit estre as merchaunz]. Et cest le jugement en ceo cas.

XIX. The mariners are

Une nef vient a descharge. Les mariners voilent aver lor lowers. Et il y a acuns qe ne ount lich ne

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[1] *lour rives et leur leire*] This reading accords with that of the Black Book. MS. Bruges renders the passage "haerlieder rive ende "haerlieder heyre." The word "heyre" is considered by Warnkoenig to be a Gallicism, but if it is a miswriting for "leyre," the English translation of it is correct.

[2] *tiele franchise . . . as merchaunz*] The texts of MS. Horn and of the Liber Memorandorum are equally defective in this place, but the words in brackets have been added in MS. Horn.

A ship arrives to load at Bordeaux or elsewhere. 18.
The master is bound to say to his companions, "Sirs, "will you freight your fares, or will you let them at "the freight of the ship." They are bound to reply which they will do. And if they choose to let them according to the freight of the ship, such freight as the ship shall have, they shall have. And if they wish to freight [their fares] for themselves, they ought to freight [them] in such manner that the ship ought not to be delayed. And if it should happen that they find not freight, the master is not to blame. And the master ought to show them their fares and their berths,[1] and each ought to place there the weight of his venture. And if he wishes to place there a tun of water, and it be cast over into the sea, it is to be reckoned for wine or other goods pound by pound, if the mariners exert themselves reasonably on the sea. And if they freight their fares to merchants,[2] the same franchise which the mariners should have shall be allowed to the merchants. And this is the judgment in this case.

A ship arrives to discharge. The mariners wish to 19.
have their wages. And there are some who have

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[1] *their fares and their berths*] The Editor is disposed to consider the reading of MS. Horn in this place to be corrupt. The Breton MSS. give no assistance, as the reading in them is generally "leur remmaige," their stowage. The correct reading may have been "leur rimes et leur "leires," "rimes" being the root of the verb arrimer, to stow; "rumar" is the reading of the Castilian MS. On the other hand the word "leire" has an affinity to "lair," the bed of a wild beast, but which is used in old Scotch songs to denote the bed or couch of a man, and of which the equivalent in Flemish is "leger," still employed at Louvain to signify a "bed."

[2] *to merchants*] This liberty of the mariner to let his fare for freight to a merchant was interdicted by the Consulate of the Sea, ch. lxxxix., but was sanctioned by the statute of Ancona, Rubr., lii. (A.D. 1397.)

bound to bring the ship back to her port.

arche leins, le mestre poet retenir de soun lower pur rendre la nef la ou il la prist, sil ne donne bone caucioun[1] pur furnir la voiage. Et tiel est le jugement en ceo cas.

XX. Distinction between mariners hired for freight and mariners hired for wages.

Le mestre dun nef lowe ses mariners de la vile dont la nef est, les uns a mareage, les autres a deniers, il avient qe la nef ne poet trouver fret a venir en ses parties, et lur covient aler plus loinz, ceux qi sount a mareage la deivent suire, mes ceux qi sount a deniers le mestre est tenuz a lur crestre lour lowers, vewe par vewe, et corps par corps,[2] par la resoun qil les avoit lowe a termine lieu. Et si ele venoit plus pres qe le covenaunt fut pris, il deyvent aver tut lur lower, mais il deyvent aider a rendre la nef la ou eux la pristrent, si le mestre veut al aventure de deinz.[3] Et ceo est le jugement en ceo cas.

XXI. Mariners may take meat on shore, but not drink.

Il avient qune nef est a Burdeux ou aillours, de tel cusine qil avera en la nef les deux mariners poent en porter un mes,[4] mais taunt com il serrount trenchez en la nef. Et tel pain come il y avera, il endeivent aver solom ceo qil porrunt manger, et de beverage endeyvent

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[1] *caucioun*] The scribe of the Bruges MS. has coined the word "caucioen" here, which is rendered "Seeckerhuyt" in the more modern versions of the Judgments of Damme.

[2] *vewe par vewe et corps par corps*] M. Pardessus suggests that the scribe of the Bruges MS. was misled by certain contractions in the MS. which he had before him, viz., v^e^ per v^e^ et c^rs^ per c^rs^, which would explain why he has written "wille "hi of ne wille, lechame over "lechame." The more modern MSS. of the Judgments of Damme translate the passage generally "to "each in proportion."

[3] *de deinz*] The reading of the Black Book is "de Dieu," which is evidently the correct reading. The Bruges MS. has "bi der aventure "van Gode," and the Castilian MS. "a la ventura de Dios."

[4] *un mes*] This is a more correct reading than that which the Black Book has adopted, upon which the Editor has commented in Vol. I., p. 117, note. The Bruges MS. follows MS. Horn, and renders "un "mes" by the words "een gher-"echte," and the Castilian MS. in like manner renders it by the words "una pieza."

neither cot nor chest on board,[1] the master may retain of their wages in order to take the ship back to the place whence he brought it, if they do not give good security to perform the voyage. And this is the judgment in this case.

20. The master of a ship hires his mariners at the town whereof the ship is, some of them for the venture, the others for money, it happens that the ship cannot find freight in those parts to come in, and it is expedient to go to a further distance; those who are engaged for the venture ought to follow the ship, but to those who are engaged for money the master is bound to increase their wages, view by view, and course by course,[2] by reason that he has engaged them [to go] to a given place. And if they go a shorter distance than that for which the engagement was made, they ought to have all their wages, but they ought to assist to bring the ship back to the place whence they brought it, if the master wishes it, at the adventure of God.[3] And this is the judgment in this case.

21. It happens that a ship is at Bordeaux or elsewhere; of such cooked food as there shall be in the ship, two mariners may carry with them [ashore] one mess, such as they are cut on board ship. And such bread as there shall be, they ought to have according to what they can eat, and of drink they ought to have none;

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[1] *on board*] The word "leins," which is not found in the Black Book, has apparently the same signification as "dedens," and is used in a similar sense in Article XI., where fustaille de leyns in MS. Horn is the equivalent of fustaille de dedens in the Black Book.

[2] *view by view and course by course*] "Kennynge by kennynge and course by course" is the language of the Rutter of the Sea, see vol. i. p. 115, notes, where the respective significations of a kennynge and a course are explained.

[3] *at the adventure of God*] "under "God's providence" would seem to be here meant.

eux ren aver, tut aprestement, si qe le mestre ne perde ses houres[1] de la nef, qe si le mestre les y perdoit, et il y eut damage, il serrount tenuz al amender, ou si un des compaignouns se blessas per besoygne daide, il sount tenuz a fere garir et amender al compaignoun et al mestre et a ceux de la table. Et cest le jugement en ceo cas.

XXII. Demurrage payable by the merchants, how divisible between the master and the mariners.

Un mestre frette sa nef a un marchaunt, et est devise entre eux et mis un terme bonement deux,[2] et le marchaunt nel tint pas, einz tint la nef et les mariners por lespace de quinze jors o plus, et acune foiz empert le mestre soun temps et sa messioun[3] par defaute de marchaunt. Le marchaunt est tenuz al amender a le mestre; et en cel amender qui serra fet le marchaunt deyvent partir le quart, et le mestre les trois parties, par la resoun quil trouve les coustes. Et cest le jugement en ceo cas.

XXIII. The master may sell part of the

Un marchaunt frette une nef et la charge et la met en chemin,[4] et entre cele nef en un port, et demorent taunt que deniers lur faillent; le maistre tient bien et

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[1] *ses houres*] These words are written in the Liber Memorandorum "ses heures." The more correct reading is that of the Black Book, "les overes," from the Gascon "las obras de la nau," signifying the workings or earnings of his ship.

[2] *deux*] deux deux is the reading in the MS. Horn, owing probably to an error of the scribe, who should have written "entre eux" as in the Black Book.

[3] *sa messioun*] The word "mes-" "sioun" has been a stumbling-block to many copyists of the Rolls, but it is in frequent use in the Consolat del Mar to signify the expenses or outgoings of a ship. The equivalent word "mission" is used in the same sense in the "Coutumier de la Commune d'Oleron, ch. lxxxiii. In Garcia's enlarged version of the Rolls of Oleron, the word has been here converted into "maison," which seems to have been the reading of the MS. which the scribe of the Bruges MS. had before him, as he writes "zine "vrecht ende zine huus," his freight and his house. Garcia would not accept the word "mai-" "son," and has substituted for it "saison."

[4] *et la met en chemin*] The Bruges MS. has the corresponding words

[and they ought to return] all quickly, in order that the master lose not the service of the ship,[1] for if the master loses it and there shall be damage, they shall all be bound to indemnify him; or if one of the crew hurts himself from want of help, they are bound to contribute to his cure, and to make compensation to their companion and the master, and their mess-men. And this is the judgment in this case.

22. A master lets for freight his ship to a merchant, and it is devised between them, and a term is fixed [for loading the vessel]; and the merchant does not observe his time, on the contrary he keeps the ship and the mariners waiting for fifteen days[2] or more, and sometimes the master loses his time and his expenses from the default of the merchant. The merchant is bound to indemnify the master; and of the indemnification that shall be paid the mariners ought to have one fourth, and the master three fourths, because he provides the expenses. And this is the judgment in this case.

23. A merchant freights a ship, and loads her, and sets her on her way, and the ship enters a port, and remains there so long that money fails them; the master keeps

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[1] *the service of the ship*] "The "hours of the ship," which would be the correct translation of MS. Horn can hardly have been here intended. The Bruges MS. and other manuscripts of the Judgments of Damme support the reading of the Black Book; on the other hand, the Castilian MS. has "los haveres."

[2] *fifteen days*] The Bruges MS. has vijftien daghen, which is the reading of all the MSS. of the Judgments of Damme, and M. Pardessus with justice attributes great importance to this measure of time, as indicating the Southern origin of the Judgments of Damme, fourteen days (a fortnight) being the corresponding interval of time which was in use in Northern Europe. Thus the maritime customs of Amsterdam, Enchuysen and Stavern speak of fourteen days (veertien dagen) as the period of lay days allowed for loading a ship.

cargo to purchase necessaries.

poet envoyer en soun pais pur quere del argent, mes il ne doit mie perdre temps, qar sil fet il est tenuz al amender as marchaunz tut lur domage qil averount. Mes le mestre poet bien prendre des vins as marchaunz et les vendre pur aver soun estorement. Et quant la nef serra arive a droite descharge, les vins, qe le mestre avera pris, deyvent estre a foer mis qe les autres serrount venduz, ne a greindre foer ne a menour. Et doit le mestre avoir soun fret de ceux vins com il prendra des autres. Et ceo est le jugement en ceo cas.

XXIV. The duty of the pilot to bring the ship up to her berth.

Un bacheler[1] est lodman dun nef, e est lowe del amener desqes au port ou lem la doit descharger, il avient bien que ceste port afermez ou lem met les nefs pur descharger. Le mestre est tenu por purveier sa fourme li et ses compaignouns, et y mettre bailignes, qil prengent au pleyn, ou qe la fourme soit bien balignee, qe les marchauntz neient damage; et sil vient damage, le mestre est tenuz al amender, sil ne dient resoun, purquei le mestre soit abatu de sa resoun.

" ende zettet te weghe," which are not found in the other MSS. of the Judgments of Damme.

[1] *bacheler*] The Bruges MS. has in the place of bacheler the word "contremeester," which the scribe must have derived from a French source. The other MSS. of the Judgments of Damme have the word "knape," which is a sufficiently correct translation of the word "bacheler."

well, and he may send to his own country to seek for money; but he ought not to lose time,[1] for if he does so, he is bound to indemnify the merchants for all the damage which they shall incur. But the master may well take of the wines of the merchants and sell them to obtain provisions. And when the ship shall have arrived at her right discharge, the wines, which the master shall have taken, ought to be valued at the same market price at which the others shall be sold, neither at a higher nor at a lower price. And the master ought to have his freight of those wines, as he shall have of the others. And this is the judgment in this case.

A young man is pilot[2] of a ship, and he is hired to conduct her into the port where she ought to discharge, it may well happen that the port where ships are placed to discharge is a closed port. The master is bound to provide her berth by himself and his crew, and to place buoys that they may appear above water, or to see that her berth is well buoyed, that the merchants may suffer no damage; and if damage results, the master is bound to make it good, if they state reasons wherefore the master should be driven from his 24.

[1] *to lose time*] This is the reading of all the ancient MSS., and it is followed in the Castilian MS. "non "deve perder tiempo." The Bruges MS. has the old Flemish word "tyt," which signifies "time." Garcia has substituted here the words "son armogan," which Cleirac also adopts, and defines as "son "temps opportune." The Editor has been unable to discover any passage in any other work in which the word "armogan" occurs.

[2] *pilot*] The employment of the word "lodman" here and in other passages to designate "the pilot" distinguishes the Judgments in a marked manner from the Consulate of the Sea, lodman being identical with "loadsman" and "leidsman," from "leiden" (Flemish) to conduct. "Loadstar" in the same sense is the guiding star, and loadstone the guiding stone. Lomant is the term used in the Coutume of the Commune of Oleron, ch. lxxxviii. and xcv.

Et le lodman ad bien fet son dever, qant il ad amene la nef a sauvete desqes a la fourme, que jesques illoeques la devoit amener. En avaunt[1] les fees est sus le mestre et sur ses compaignouns. Et cest le jugement en ceo cas.

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[1] *en avaunt*] The Black Book has the reading "Dicelle heure en "avant." The Bruges MS. has "ende daerna," which accords with MS. Horn.

reasons.[1] And the pilot has well done his duty when he has brought the ship in safety to her berth, for so far he ought to conduct her, and thenceforth the duty is on the master and his companions. And this is the judgment in this case.

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[1] *his reasons*] M. Pardessus considers that there should be a stop inserted after the word "abatu," which should be interpreted "dis-"comfited," and that the sentence should be continued in this form, "and the reason is, that the pilot "has well done his duty," &c. But no MS. supports the suggestion of M. Pardessus, and the text as it stands, although it is clumsy, admits of an intelligible interpretation. The Leghorn MS. has "se no dits "rason per que ed no sia abatut "de sa rason."

LES BONES COSTUMES DE LA MAR.

THE GOOD CUSTOMS OF THE SEA.

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NEWARK

ACI COMENCEN[1] LES BONES COSTUMES DE LA MAR.

Capitol i. Dals bons stabliments e costumes de la mar.

Aquests son los bons stabliments e les bones costumes, que son de fet de mar, que los savis homens, qui van per lo mon, ne comencaran a donar als nostres antecessors; los quals faeren per los libres de la savietat de les bones costumes. On d'aqui avant podem trobar, que deu senyor de nau fer a mercaders e a mariner e a pelegri o a altre home que vaje en la nau, e encara[2] qual cosa deia fer mercader a senyor de nau, e mariner al senyor de la nau o del leny, e pelegri atrassi. Con pelegri es dit tot home qui deia donar nolit de la sua persona sens sa mercaderia.

Capitol ii. Com patro vol comencer nau, que deu declarer als personers.

Comencem.[3] Com lo senyor de la nau o del leny comencara de fer la nau e volra fer parts, elle deu dir e fer entenent als personers, de quantes parts la fara, e de quin gran, e quant haura en pla,[4] e quant haura en sentina, et quant obrira, e quant haura per carena.

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[1] *Aci comencen*] This title is introduced in the printed editions of 1494 and 1502, but it does not appear in MS. Espagnol 124, which commences at once with the Rubric "Dels bons stabliments e cos- "tumes de la mar."

[2] *e encara*] This is the commencement of Chapter ii. in Espagnol 124, and there is prefixed to it the "Rubric "Que deu fer "mariner a senyor de nau, ne "mercader, ne pelegri atrassi."

[3] *Comencem*] Chapter iii. begins here in Esp. 124, with the Rubric "Capitol de comensament de nau "o de leyn."

[4] *e quant haura en pla*] These words are omitted in Esp. 124, the text of which is in a more ancient idiom, "ne de quin gran, ne quant "haura en sentina, ne quant obrira, "ne quant haura per carena."

HERE COMMENCE THE GOOD CUSTOMS OF THE SEA.

Chapter i. Of the good constitutions and customs of the sea.

These are the good constitutions and the good customs which regard matters of the sea, which wise men who travelled over the world communicated to our predecessors, who composed therewith books of the science of Good Customs. In what follows we shall find laid down the duties which the managing owner[1] of a ship owes to the merchants and to the mariners and to the passengers, and to the other persons who are on board the ship, and likewise the duties which the merchant and the mariner and the passenger also owe to the managing owner. The term passenger[2] includes all who ought to pay freight for their persons apart from their merchandise.

Chapter ii. When the managing owner wishes to commence a ship, what he ought to declare to the part-owners.

Let us commence. When the managing owner of a ship or vessel undertakes to construct a ship, and wishes to share it with others, he ought to explain and make intelligible to the part-owners into how many shares he intends to divide it, and of what size it is to be, and what tonnage it is to have, and what depth in the hold, and what beam, and what length of keel.

[1] *managing owner*] This term expresses most nearly what the term "senyor de la nau" or "dominus "navis" meant in the early days of maritime navigation, before the ship was committed to the charge of a master who had not any proprietary interest in her. See chapter clxxiii.

[2] *passenger*] Chapter lxviii. gives a more complete description of what is signified by the term "pas- "senger."

Capitol iii. De pèrsoner qui no volra o no pora fer la part promesa.

E si aco[1] fara entenent lo senyor de la nau als personers, e los personers li prometran de fer part, aquella part que li prometra de fer lo personer, aquella li deu attendre. E si lo personer no lo y pot attendre, o no vol fer co qui li haura convengut, lo senyor de la nau o del leny lo n'pot destrenyer ab la senyoria, o pot manlevar sobre aquella part que aquell li debia fer. Facam compte que ell hi dega fer una setzena, e no y hagues fet compliment sino a mija setzena (e axi podem fer de una setzena multiplicament com de un quarter), e si elli li deu fer aquella dita part e no la li fa, lo senyor de la nau o del leny pot empenyorar la part complida per fer compliment a la part qui li haura convenguda de fer. E fon fet perco aquest capitol, car aquell qui commenca la nau o leny no la comencaria, si sabia que los personers li deguessen fallir, ne ho puguessen fer.

Capitol iv. De personer qui mor apres haber comencat o promes de fer part.

Si algu[2] prometra de fer part a algu en nau o en leny, si aquell qui la part haura promesa de fer morra ans que aquella nau o aquell leny, en que haura promesa de fer part, no sera fet ni acabat, los hereus o los detenidors dels bens de aquell qui mort sera, no

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[1] *E si aco*] Esp. 124, chapter iv. begins here with the Rubric "Capitol si nagun prometra de fer part en nau o en leyn."

[2] *Si algu*] Esp. 124, chap. v. begins here with the Rubric "Capitol si negu prometra de fer part en nau o en leyn."

Chapter iii. Of a part-owner who will not or cannot furnish his promised share.

When the managing owner of a ship has explained these matters to the part-owners, and the part-owners have promised him to contribute their shares, each part-owner ought to furnish the share which he has promised. And if a part-owner cannot furnish his share, or is not willing to perform what he has agreed to, the managing owner of the ship or vessel may constrain him by the magistrates[1] of the place, or may borrow on the share which he has promised to furnish. Let us suppose that a part-owner ought to furnish a sixteenth, and that he has only furnished half a sixteenth share (and we may take a sixteenth for example and multiply it equally as a fourth), and if he ought to furnish the other half and does not do it, the managing owner of the ship or vessel may take as a security[2] the half which is completed, in order to complete the other half, which he has agreed to furnish. And for this reason this chapter has been made, namely, the person who commences a ship or vessel would not commence it, if he knew that the part-owners might fail him or might refuse to furnish their shares.[3]

Chapter iv. Of a part-owner who dies after having commenced or promised to furnish his share.

If any person shall promise to take a share with any one in a ship or vessel, and if he who has promised to take a share shall die before the ship or vessel, of which he has promised to take a share, shall be made or finished, the heirs or administrators of the goods of him who is deceased are not liable for anything to the

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[1] *magistrates*] The term "senyoria" means sometimes the sovereign authority, sometimes the officers to whom the administration of justice was confided.

[2] *as a security*] The term "em-" penyorar" is the Catalan equivalent of the Latin "pignorari," to seize as a security. The managing owner was empowered to borrow money, and to seize the half share of the ship as a security for its reimbursement. It is not probable that the contract of maritime hypothecation had been as yet introduced.

[3] *their shares*] Chap. ccxxxviii. makes further provision on this subject.

son tenguts de res a aquell senyor a qui aquell qui mort sera haura promes de part a fer, mentre viu era, si donchs en son testament ell no ho manara, o manat jaquit no a haura. Ans, si aquell qui mort sera, havia donat alguns diners a aquell per rao de la part, que ell havia promesa de fer ab ell, si los diners seran tants que bastassen a fornir tota la part que aquell havia promesa de fer; la part aquella deu esser venuda ans que la nau o leny partesca o isca d'aquell loch on sera stat fet, no contrastant per aquell capitol qui diu, que nau o leny no s'pot vendre ne encantar tro que haja fet viatje. Per qual rao? Perco, car hom quant es mort no es tengut de tenir fur ne ley ne costuma, salvo deute ho comanda e de tort si l'te. Encara per altra rao: perco, car al dia que algu mor, aquell dia es partida tota companyia que ab alguns hagues, que hom qui mort es no ha companyo. E si per ventura aquells diners que ell haura donats a aquell no bastassen a alguna part a complir, lo senyor de la nau o del leny es tengut de cerquar qui li fornesca aquella part, que aquell qui mort es li haura promesa de fer. Encara, sia tengut lo dit senyor de la nau de retre aquells diners que ell rebuts haura, als hereus o als detenidors dels bens de aquell qui los dits diners li dona. Salvo empero, que si aquell, qui senyor sera, haura a fer alguna leixa a aquell qui li fornira aquella part que aquell qui mort es li havia promesa de fornir, aquella leixa aytal deu esser abatuda d'aquells diners qe ell haura rebuts. Empero, que tot aco sia fet, qui desus es dit, menys de tot frau. E per les

managing owner to whom the deceased part-owner has promised to take a share, when he was alive, unless in his testament he shall have so directed them, or have left such direction. On the other hand, if the deceased part-owner has advanced to the managing owner money on account of the share which he has promised to take, if that money shall be sufficient to complete the entire share which he has promised to take, his share ought to be sold before the ship or vessel sails from or goes out of the port where she has been constructed, notwithstanding the chapter[1] which says that no ship or vessel can be sold by private contract nor by public auction until she has made a voyage. For what reason? Because when a man is dead he is not bound to observe any judgment or law or custom, saving in respect of a debt or a deposit, or a wrong, if he has done any. Likewise for another reason, because upon the day upon which a person dies, the partnership which he may have with another person is altogether severed, for a dead man has no partner.[2] And if by chance the money which he has advanced to the managing owner is not sufficient to complete his share, the managing owner of the ship or vessel is bound to search for some one who will furnish that share, which the deceased part-owner has promised to furnish. Likewise the managing owner of the ship is bound to return the money, which he has received, to the heirs and administrators of the goods of him who has advanced the money. Saving, nevertheless, if he who is the managing owner shall have to make any allowance to him, who shall furnish the part which the deceased had promised to furnish, that allowance ought to be deducted from the money which he has received. Nevertheless, all this as abovesaid ought to be done without fraud. And

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[1] *the chapter*] Chapter x. is probably the chapter here intended.

[2] *partner*] This principle is more explicitly affirmed in chapters ccxvi., ccxviii., and ccxix.

raons desusdites fon fet aquest capitol. Ara respongam[1] que la volgues fer, ell no faria tan gran leny e fer li ha menor, si ell sabia que aquell personer hagues poder que li fallis de res, que convengut li hagues.

Capitol v. Com patro vol fer major nau que no haura dit als personers.

Ara parlem[2] del senyor de la nau o del leny qui comencara la nau en forma poca, e dara mes en sentina e per carena e de pla, e fer l'a major lo terc o lo quart o la meitat, abans que no u haura fet a saber als personers; sapies que l'personer no li n'es tengut de res a creixer, sino solament axi com ell los ho haura fet entenent al comencament. E si ell la creix despuys, lo personer hi deu haber la sua part, axi be com si havia mesa part al creix que li haura fet, salvant una cosa, que l'mestre la faes de majors mesures que l'senyor de la nau li hagues dites, e empreses ab los personers. Mas, si lo senyor de la nau la volra creixer, ell deu anar a quascun personer e demanar los ne, ia si los dits personers volran que s'crescan les parts e veure los qui ho volran e los[3] qui ho contrastaran. Facam ara compta, que sien quatre e sis,[4] los sis vencen los quatre, e deu los vuyt: e perco per dos e per tres o per quatre o per cinch personers, pus sien los

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[1] *Ara respongam*] Esp. 124, chap. vi., begins here, with the Rubric "Capitol de nau ho de leyn, qui "s'comensera en forma poca," followed by ara responam."

[2] *Ara parlem*] Esp. 124, chapter vii., begins here, with the Rubric "Capitol de nau o de leyn que hom "volxa crexer."

[3] *e los*] Esp. 124 omits "e veure "los qui ho volran e los."

[4] *e sis*] Esp. 124 has "que sien "de iiii. fis a xvi. car los vi. vensen "los iiii. e x. los viii."

for the reasons above mentioned this chapter has been made. If we assume that the managing owner wishes to build a ship, he would not have made it so large, or he would have made it smaller, if he had known that the part-owner in question might fail him in anything which he had agreed to.

Chapter v. When the managing owner builds a vessel larger than he has announced to the part-owners.

Now we speak of the managing owner of a ship or vessel who shall commence a ship of small dimensions, and shall give more in the hold or in the keel or in the beam, and shall make it a third or a fourth or a half part larger, before he has made it known to the part-owners; know that the part-owners are not bound to increase their contribution in any respect, but only to furnish so much as he had made them to understand at the commencement.[1] And if he increases it afterwards, each part-owner is entitled to have his share in the increase which he has made, precisely as if he had contributed to the increase, saving the case in which the builder has made it of greater dimensions than the managing owner of the ship has stated, and has agreed with the part-owners. But if the managing owner of the ship wishes to increase it, he ought to go to each part-owner, and demand of him if he wishes to increase his share, and see those who are so willing and those who object. Let us now suppose that they are four and six,[2] the six prevail against the four, and ten against eight, and therefore two or three or four or five part-owners, where they are the minority,

[1] *commencement*] Chap. ccxxxviii. provides for the case where a managing owner has proposed to build a barque, and ends with building a ship. The same principle had been affirmed in the ordinances of Peter of Aragon of 1340, art. 26, which is inserted in MS. Espagnol 124, and which is printed in the Libre de Consolat de Mar, Barcelona, 1494, under the title of Capitols del Re Don Piedro.

[2] *and six*] This is the reading of the editions of 1494 and 1502, but Espagnol 124 has a reading, which is not very intelligible, and is probably a miswriting.

menys,[1] no deu star de creixer la nau. E axi son tenguts los personers qui contrastan al senyor de la nau de fer la part que promesa li hauran, axi com la major forca dels personers faran; e deu ajustar a la demanda tots los personers ensemps.

Capitol vi. Si patro vol creixer la nau, los personers a que li son tenguts.

Segons que[2] en lo capitol desusdit es contengut, diu, que si lo senyor de la nau o del leny volra creixer aquella nau o aquell leny; que ell ho deu fer a saber e dir a tots los personers; e si tots los personers ho volran, ell la pot creixer, e en aco no ha contrast negu. Mas la on diu, que si la major forca se acordara que ell la cresca, que ell ho pot fer, que per quatre ne per cinch personers no deu star que no s'cresca: mas no diu aquells personers qui aco contrastaran de que li son tenguts, e de que no; e axi, pora hi haver algun contrast. E per aquesta rao, que contrast algu no y pusca haver, los nostres antecessors feren aquesta esmena, e digueren en axi e declararen; que ver es que la nau o leny se pot creixer, pus la major forca dels personers ho vulla; mas empero es axi attendre que deu esser vist e esguardat lo poder de aquells personers qui contrastaran, perco com per ventura hi haura alguns de aquells qui ho contrastaran, qui si ells havien res mes a bestrer en aquella nau o en aquell leny, sino en axi com ells ho comprengueren al comencament quant la nau se comenca, ells ho haurien a manlevar o baratar, o haurien a vendre alguna cosa que tostemps ne serien despagats: e seria mal fet, per que encara algun home qui fa part en nau o en leny fa ho algunes

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[1] *los menys*] Esp. 124 omits "pus sien los menys."

[2] *Segons que*] Esp. 124, chapter viii. begins here with the Rubric "Capitol de nau o leyn que hom volra crexer," followed by "Segons que."

ought not to prevent the enlargement of the ship. And accordingly the part-owners who object to furnish the share which they have promised to the managing owner of the ship, are bound to do what the majority of the part-owners will do; and he ought to assemble all the part-owners together to hear his proposal.

Chapter vi. If the managing owner wishes to enlarge a ship, what is the obligation of her part-owners.

According to what is contained in the aforesaid chapter it has been said, that if the managing owner of a ship or vessel wishes to enlarge the ship or vessel, he ought to make it known and tell it to all the part-owners, and if all the part-owners are willing, he may enlarge it, and so far there can be no dispute. But it has been there said that if the majority shall agree that it should be enlarged, the managing owner may enlarge it, and that four or five part-owners shall not prevent its being enlarged; but it has not been said with respect to those part-owners who have objected to the enlargement, how far they are under any obligation or not, and on this point there may be some dispute. And for this reason, in order to prevent any such dispute, our predecessors have made this amendment, and have said and declared as follows; that it is true that the ship or vessel may be enlarged, for the majority of the part-owners have so willed it, but nevertheless it is to be understood that regard should be had to the means of the part-owners who have opposed the enlargement, inasmuch as it may happen to some of those who have objected, that if they have to invest anything more in that ship or vessel beyond what they understood at the beginning, when the ship was commenced, they would have to borrow or barter, or would have to sell something, which would be a discredit to them always. And this would be a mischievous result, for it often happens that a person takes a share in a ship or vessel from the great friendship which he has for the man who wishes to

vegades per gran amistat que haura ab aquell qui la nau o leny volra fer, mes que per speranca de guany que ell ne sper haver;[1] e per aquesta rao seria mal fet que aquell hi fos damnificat. E per les raons desusdites los nostres[2] antichs qui primers anaren per lo mon, veren e coneguren que mal seria fet. E perco digueren et declararen, que si algun personer di aquells qui contrastaran que la nau o lo leny no s'cresca per no poder, si hauran promes de fer una octava, que no y sien tenguts de fer mes de una setzena, e lo senyor de la nau no l's pusca de res als forcar; perque, car culpa es del senyor de la nau o del leny, com aquell no li atten tot co que li havia promes, perco car ell creix la nau o l' leny menys del voler d' ells; e per aquesta rao lo senyor de la nau o del leny no l's pot destrenyer. E axi lo senyor de la nau deu cerquar altres personers qui li facen compliment a aquelles parts que aquells no li poran complir. E encara si faeren gran gracia als senyors de les naus o dels lenys, com del tot no absolveren[3] dits personers, mas faeren ho perco que l's senyors de les naus e dels lenys no fossen del tot desfets; que gens pas no es rao que negu puixa ni deia haver poder en los bens d'altruy, sino a tant com aquell, de qui seran, li volra donar. Empero, si aquells personers qui ho contrastaran seran la menor partida, e seran apoderats e hauran poder de complir aquella part que promesa hauran de fer sens lur dan, lo senyor de la nau o del leny a qui promesa la hauran de fer, los ne pot destrenyer, tot en axi com en lo capitol desus es ia esclarit e certificat, que en totes coses es rao que la maior forca s'o apodere, e se n' ho porte. E per les raons desusdites, tot senyor

[1] *que ell ne sper haver*] Esp. 124 omits all the text from "E per "aquesta rao" down to "que ell "ne sper haver."

[2] *nostres*] Esp. 124 has "mestres "antichs" in place of "nostres an- "tichs."

[3] *no absolveren*] Esp. 124 has "no l's absolveren' in place of "no absolveren."

build the ship or vessel more than from any hope of gain which he expects to make of it: and for this reason it will be a mischievous result if he should incur loss thereby. And for the aforesaid reasons our predecessors, who first travelled over the world, saw and recognised that the result was mischievous, and therefore said and declared, that if any part-owner, of those who objected that the ship or vessel should not be enlarged, should have promised to furnish an eighth share, he should not be bound to furnish more than a sixteenth, and the managing owner of the ship should not be able to compel him, for it is the fault of the managing owner of the ship or vessel if the part-owner has not accomplished all which he has promised, inasmuch as the enlargement of the ship or vessel has been made against his will, and for this reason the managing owner of it cannot constrain him. And accordingly the managing owner ought to search out other part-owners to complete the shares which the original part-owners cannot complete. And this is likewise a great favour to the managing owners of the ships or vessels, since they do not entirely release the part-owners, but do this in order that the managing owners of the ships or vessels may not be altogether undone, for there is no reason why anybody should or ought to have power over the goods of another beyond what he to whom they belong is willing to allow. Nevertheless if those part-owners who oppose shall be the minority, and shall be outvoted, and have the means to complete that part, which they promised to furnish, without damage to themselves, the managing owner of the ship or vessel, to whom they promised to furnish it, may constrain them to do so, according as it has been explained and certified in the afore-mentioned chapter, for in all things it is reasonable that the majority shall prevail and carry the day. And for the aforesaid reasons every managing owner of a ship or

de nau o de leny deu guardar e fer de guisa com ha en cor de fer nau o leny, que ho faca e ho emprenga en guisa[1] e en manera ab aquells qui part hi prometran de fer, que entre ell ni ells no puga haver algun contrast per alguna rao. E per los esclariments desusdits fon feta aquesta esmena.

Capitol vii. De mestre d'aixa, si creixera les mesures.

Si algun[2] mestre d'aixa fara majors mesures que l'senyor de la nau no haura empres ab ell, de tota la messio del creximent de la obra deu paga la meytat, e perdre lo loguer d'aytants jornals com hi obrara. Encara, lo mestre d'aixa es tengut de dir a quascun personer totes les mesures les quals haura empreses ab lo senyor de la nau; e encara los es tengut de dir quina obra fa, si es fort o si es febla.

Capitol viii. De mestre d'aixa e calafat, a que son tenguts al patro e l'patro a ells.

Si mestres d'aixa[3] o calafats obraran ab algun senyor di nau o de leny, ells son tenguts de fer bona obra e stable e en res no deven flaquejar. E si los mestres d'aixa e los calafats fan bona obra e que sien mestres, e que aquella obra o maior e millor fossen suficients de fer e de tenir en lur poder; si lo senyor de la nau o del leny, qui la obra los haura mesa en poder, e ab voluntat d'ell meteix la hauran emparada e comencada, e stant en la obra, haura algun desgrat dels sobredits

[1] *en guisa*] Esp. 124 omits the words "com ha en cor de fer nau o "leyn, que ho faca e ho emprenga "en guisa."

[2] *Si algun*] Esp. 124, chapter ix. begins here with the Rubric "Capi- "tol de mestra d'axa qui fara "majors mesures qui ab ell no "aura empreses."

[3] *Si mestre d'aixa*] Esp. 124, chapter x. begins here with the Rubric "Capitol de mestra d'axa o "calafat."

vessel ought to take care and keep in view, when he has an intention to make a ship or vessel, that he do it and undertake it in such form and manner with those who shall promise to take part in it, that no dispute for any reason may or can arise between him and them. And for the sake of these explanations this amendment has been made.

Chapter vii. Of the ship-builder, if he shall enlarge the dimensions.

If any shipbuilder shall make the dimensions of a ship larger than the managing owner shall have arranged with him, he ought to pay a moiety of the whole expenses of the enlargement of the work, and lose the wages of as many days as he shall employ in this work. Besides the shipbuilder is bound to declare to every part-owner all the dimensions which he has settled with the managing owner, and is bound to tell them what work he is executing, whether it is strong or weak.

Chapter viii. Of the ship-builder and the ship-caulker, what are their obligations to the managing owner, and what are his obligations to them.

If a shipbuilder[1] or a ship-caulker[2] shall work for any managing owner of a ship or vessel, he is bound to make good and durable work, and ought not to fail in any part. And if the shipbuilder, and the ship-caulker make good work, and are master-workmen[3] and sufficient to make and execute the given work or more or better work, if the managing owner of the ship or vessel who has placed the work in their hands, and with whose consent they have undertaken and commenced it, whilst the work is going on shall have

[1] *shipbuilder*] This should literally be translated master-carpenter. The ancient statute of Marseilles, lib. ii. cap. xxxiv. speaks of magistri seu carpentarii d'aissa.

[2] *ship-caulker*] The statute of Marseilles speaks of Calafati.

[3] *master-workmen*] The Catalan term "mestres," which occurs here and in several passages below, seems to mean a workman of a superior character, and the Editor has accordingly rendered it by the phrase master-workman. The ancient statute of Marseilles in like manner in referring to the carpenter and caulker styles them "prædicti magistri."

mestres, los dits mestres, faent be e diligentment tot co que a la obra pertany, e lo senyor de la nau los ne volra gitar per lo desgrat que per ventura de ells haura, o per ventura trobara altres qui la li farien per millor mercat; lo senyor de la nau o del leny no l's ne pot gitar ni ells ni la poden iaquir, pus que ells hauran comencada aquella obra, fins que sia acabada, pus aquells mestres sien bons e suficients de aquella obra a fer, e encara de molt millor e maior que aquella no es. E si lo senyor de la nau los ne gitara pus que ells sien bons e suficients e faran be e diligentment tot co que a aquella obra pertanga, negun mestre d'aixa, ni negun calafat ne s' deu metre en aquella obra a fer, si donchs lo senyor de la nau o del leny no se n'avenia o no se n'era avengut ab aquells mestres qui la obra haurien comencada; e gens aquells no se n'deuen moure per la peraula del senyor de la nau o leny, ans ho deuen fadigar a aquells mestres qui aquella obra hauran comencada. E si ells los ho atorgan e ho renuncian, la donchs ells poden emparar de fer e de obrar en aquella obra, e abans no; car si abans que ells no haguessen haguda fadiga de ells hi obraren, farien semblant que ells qui aco comencarien de fer, haguessen desalt e menyspreu de aquells mestres qui aquella obra haurien comencada e fessen: encara mes, farien semblant que s'altassen de treball. Per co quascu se deu guardar de mal et de treball, tot aytant com pot; car de mal de poch n'a hom assau. E aytambe lo senyor de la nau o del leny se deu guardar de fer desplaers a aquells mestres que ell metex haura hagut e ab sa voluntat hauran comencada la sua obra: pus que ells facen be e diligentment co que pertany a aquella obra: e axi deu la l's leixar acabar. Mas

any dispute with them, the said master-workmen doing well and diligently all which appertains to the work, and the managing owner of the ship wishes to dismiss them on account of the dispute which by chance he has with them, and he shall by chance find others who will do it at a cheaper rate, the managing owner of the ship or vessel cannot dismiss them, nor stop the work which they have commenced, until it is finished, as long as those master-workmen are good and sufficient to execute the work, and likewise much better or greater work than it is. And if the managing owner of the ship shall dismiss them whilst they are good and sufficient and are doing well and diligently all that appertains to the work, no other shipbuilder nor ship-caulker ought to meddle with that work to do it, unless the managing owner of the ship or vessel shall have come to an arrangement with those master-workmen who have commenced the work, and those persons ought not to rely upon the word of the managing owner of the ship or vessel, on the contrary they ought to obtain the consent of those master-workmen who have commenced the work. And if the latter agree and renounce the work, then they may undertake to do it, and to work upon that work, and not beforehand; for if they should work before they have their consent, it would seem that in so commencing to work they had a hatred or spite against those who had commenced and so far executed the work, besides they would seem to exult in their trouble. Wherefore every person ought to beware of evil and trouble, as much as he can, for one meets with enough of evil in spite of precaution. And otherwise the managing owner of the ship or vessel ought to guard against causing displeasure to those master-workmen whom he has himself employed, and who with his consent have commenced the work, provided that they do well and diligently what appertains to the work, and he ought to

empero, si aquells mestres d'aixa o calafats, qui hauran comenca la obra de fer, no seran suficients que ells la sapien fer; lo senyor de la nau los ne pot gitar e mettre en poder d'altres mestres qui sapien fer aquella obra sua. E aquells mestres qui la obra sabran fer, ne son tenguts de demanar paraula a aquells mestres qui aquella obra havien comencada, pus que ells no la sapien fer ne sabien exirne a cap. Ans son tenguts aquells que s'faran mestres d'aixa o calafats qui s'emparan de alguna obra a fer, e no la sabran fer, sino que enganan les gents, de fer esmena a aquell de qui aquella obra sera, de tota la messio e de tot lo dan que per culpa de ells haura sostengut. Empero tot mestre d'aixa e tot calafat se guart e s' deu guardar, e quina obra fara, ne quina no: que si per culpa de la obra que ell haura feta, lo senyor de la nau o del leny haura a fer esmena als mercaders, o n'sostendra algun dan, los sobredits mestres que aquella mala obra hauran feta, son tenguts de rembre e d'esmenar aquella esmena que lo senyor de la nau haura haguda[1] a fer als dits mercaders, e encara tot lo dan que lo senyor de la nau ne haura sostengut per culpa de la falsa obra que los dits mestres li hauran feta. E si aquells mestres no hauran de que pagar, deven esser presos e mesos en poder de la senyoria e star tant tro que haien satisfet e entegrat al senyor de la nau tot lo dan que per culpa d'ells haura sostengut; que axi li n'son tenguts com si lo y havien emblat o tret de la casa[2] enganosament. E lo senyor de la nau es tengut

[1] *haura haguda*] These words down to "de la nau" inclusive are omitted in Espagnol 124.

[2] *casa*] Caxa is the reading of Esp. 124.

allow them to finish it. Nevertheless, if those ship-builders or ship-caulkers who have commenced doing the work, shall not be sufficient to know how to execute it, the managing owner of the ship may dismiss them, and place the work in the hands of others who know how to execute it. And those master-workmen who know how to execute the work are not obliged to ask to speak with those master-workmen who have commenced the work, inasmuch they do not know how to execute it, and cannot carry it out to completion. Further, those who hold themselves forth as ship-builders and ship-caulkers, and undertake to do any work and cannot do it, and so far deceive people, are bound to make compensation to him, to whom the work belongs, for all the expenses and all the damages which he may have sustained from their fault. Nevertheless every ship-builder and ship-caulker ought to be very careful as to what work he does undertake or does not; for if by default of the work, which has been executed by them, the managing owner of the ship or vessel has to make compensation to the merchants, or shall sustain any loss, the afore-mentioned master-workmen, who have executed that bad work, are bound to reimburse and make good[1] the compensation which the managing owner has had to make to the merchants, and besides all the loss which the managing owner of the ship may have sustained from the defects of that bad work, which those master-workmen have executed. And if those master-workmen have not wherewithal to pay; they ought to be seized and placed in the custody of the local authorities, and remain there until they have satisfied and indemnified the managing owner of the ship for all the loss which he may have sustained from their default, for they are as much bound to do so, as if they had stolen or fraudulently taken anything from his house. And

[1] *to make good*] The liability of the workman for damage consequential on his negligence was recognised in the Digest lxix. tit. ii. § i. fr. 51, Locati, conducti.

donar a quascun mestre qui en la sua obra obrara, per quascun jorn tres diners per pa et per beure, e encara lo loguer que ab ells empendra, si donchs los dits mestres no li volen fer gracia que l'sperassen del un disapte al altre. E aco es voluntat dels mestres si ho faran o no, que l'senyor de la nau o del leny [1] no l's ne pot destrenyer ne forcar, si no tant solament a lur voluntat. E si los mestres obraran ab lo senyor de la nau a cosiment, que algun preu no haura entre ells, lo senyor de la nau los es tengut de donar tot aytant com altres mestres pendran en altres obres e segons que l'temps sera e segons l'estament de la terra. Per que tot mestre d'aixa e tot calafat sia que faca obra a scar, sia que faea a iornals, se deu guardar que faca bona obra e stable, perco que la pena que desus es dita no li pogues desus venir. E fon fet perco aquest capitol; car molt mestre d'aixa e molt calafat faria molta mala obra si ell sabia que ell no n'hagues a sostenir nengun treball ne nengun dan; e perco es imposada la pena que desus es dita; perque quascu se guart e ia quina obra fara, ne quina no.

Capitol ix. De mestre d'aixa o calafat, qui fara obra a scar.

Si algun [2] mestre d'aixa o calafat pendra o fara alguna obra a scar, ell es tengut de pagar a tots los mestres que ab ell obraran en aquella obra, la qual ell haura presa a scar e promesa de fer a aquell de qui sera. E si aquells mestres que ab ell obraran no saben que ell faca aquella obra a scar, lo senyor de la obra los ho deu dir e demostrar, perco que si aquell mestre

[1] *o del leny*] These and the following words down to "de la nau" inclusive are omitted in Esp. 124.

[2] *Si algun*] The eleventh chapter of Esp. 124 commences here with the Rubric "Capitol de mestra d'axa, "qui pendra obra a escar."

the managing owner of the ship is bound to give to every master-workman who shall execute work for him, for every day three shillings for bread and wine, and besides the wages which they shall have agreed upon, unless the master-workmen do him the favour to wait from one Saturday to another. But this is at the discretion of the master-workmen to do so or not, for the managing owner of the ship or vessel cannot constrain nor force them, but only with their good will. And if the master-workmen execute the work for the managing owner of the ship at his discretion, no price being settled between them, the managing owner of the ship is bound to give to them as much as other master-workmen receive for other work, and according to the time and the condition of the country. Wherefore every ship-builder and ship-caulker, whether he executes work by the job or by the day, ought to take care that he executes good and durable work, so that he may not incur the aforesaid penalty. And for this reason the aforesaid chapter was made, for many a ship-builder and many a ship-caulker would do much bad work, if he knew that he would not have to incur any penalty or any loss thereby, and therefore the aforesaid penalty has been imposed in order that every one may take care what work he does, and what not.

Chapter IX. Of the ship-builder or ship-caulker who does work by the job.

If any ship-builder or ship-caulker take or do any work by the job, he is bound to pay all the master-workmen[1] who work for him in that work, which he has undertaken by the job, and promised to execute for him to whom it belongs. And if the master-workmen, who work with him, do not know that he does the work by the job, the managing owner ought to tell it and explain it to them, in order that if the ship-

[1] *master-workmen*] The word "mestre" is used alone in chapter v. to signify the mestre d'aixa or ship-builder. It is here used apparently to signify the workmen serving under the ship-builder or the ship-caulker.

era baratador o trefegador o que no hagues de que pagar, aquells mestres que ab ell haurien obrat no sien enganats,[1] no sabent que ell faca aquella obra a scar. E si lo senyor de la obra no l's ho diu o demostra com ells comencen a obrar en aquella sua obra, si aquell mestre qui la obra fara a scar no l's volra pagar o no haura de que, aquells mestres qui ab ell hauran obrat en aquella obra se n'poden tornar, e emparar aquella obra que ells feta tant hauran; e aquella obra deu estar emparada tro que aquells mestres sien satisfets de tots lurs maltrets, e encara de tot dan, et de tot destrich e de tota messio que els sufferta hauran. Empero, si lo senyor de qui aquella obra sera los haura dit e demostrat que aquell mestre le fa aquella sua obra a scar, e ells ho hauran entes, pag los aquell mestre o no l's pag, aquells sobredits mestres no poden ni deuen emparar aquella obra que feta hauran; pus que l'senyor de la obra los ho haura dit, com ells comencen a obrar, que ell a scar fa fer aquella obra. Empero, si l'senyor de la obra dira a aquells mestres, que pensen de obrar, que ell los pagara be e pla tots leurs maltrets, e hi obraran en fe del senyor de la obra, e per les paraules que ell los haura dites, si ell ha ia pagat aquell mestre de tot co que promes li haura, o no sia pagat; si el mestre no pagara aquells mestres, o no haura de que pusca pagar, lo senyor de la obra los es tengut de pagar; perco com promes los

[1] *no sien enganats*] These words are omitted in Espagnol 124.

builder[1] be a swindler, or a cheat, or have not wherewithal to pay, the other master-workmen who work with him may not be deceived, not knowing that he does the work by the job. And if the managing owner of the work has not told and explained it to them when they commenced to work upon his work, if that ship-builder who has taken the work by the job is not willing to pay them, or has not wherewithal, those master-workmen, who have worked with him in that work, may turn and take possession of the work which they have executed, and that work may be detained by them until those master-workmen are satisfied for all that is owing to them, and besides for all their losses and all their damages, and all the expenses which they have undergone. Nevertheless if the managing owner to whom that work belongs has told and explained to them that the ship-builder has undertaken the work by the job, and they have so understood, whether that ship-builder pays him or not, the aforesaid master-workmen may not and ought not to seize the work which they have executed, inasmuch as the managing owner of the work will have told them when they commenced their work, that he was having the work done by the job. Nevertheless if the managing owner of the work shall say to those master-workmen who intend to work, that he will pay well and fully all that is owing to them, and they shall work upon the faith of the managing owner of the work, and in consequence of the words uttered by him, whether he has paid to the ship-builder all that he has promised him or not, if that ship-builder does not pay the other master-workmen, and has not wherewithal to pay, the managing owner of the work is bound to pay them, inasmuch as

[1] *ship-builder*] Here the word "mestre" resumes the original signification as in chapter v. and denotes the master-workman, who has contracted to build the ship. The Editor has accordingly varied the translation of the word.

ho haura sia qu'ell tenga d'aquell mestre alguna cosa o no. Que mester es que aquells mestres sien pagats, perco com en fe del senyor hi hauran obrat, e perco car ell los promes de pagar: que si ell per ventura promes no l's ho hagues, los sobredits mestres no hagueren obrat e hagueren fet de lur prou en altra part. Perque tot senyor de obra sia que la faca fer a scar o a iornals se guart que prometra o que no: que mester es que tot co que prometra que ho attenga, vulla o no. E si los mestres d'aixa o calafats qui faran obra a scar, e empendran[1] ab lo senyor, de qui la obra sera, que ells la livraran feta a dia cert o a temps sabut, e entre ells haura posada o mesa pena certa, si los dits mestres no hauran acabada aquella obra axi com promes hauran, lo senyor de la obra los pot demanar la pena que entre ell e los dits mestres mesa hi posada sera; e ells dits mestres son tenguts de donar aquella, menys de tot contrast. E si entre ells pena alguna mesa ne posada no sera, los dits mestres son tenguts de donar al senyor de la obra tot dan e tot destrich e tota messio qu'ell ne haura feta, ne fara, e deune esser cregut per son sagrament. Empero, es axi a entendre que fos fet aquell destrich per culpa e per negligencia dels sobredits mestres: e si per culpa e per negligencia no sera fet aquell dan o aquell destrich, no es rao que ells ho deien esmenar, ne encara la pena, si posada hi sera, pagar, pus per culpa d'ells no sera

[1] *e empendran*] The conjunctive particle e is here evidently redundant.

he has promised it to them, whether he has anything which belongs to that ship-builder or not. For it is proper that those master-workmen [1] be paid, since they have worked upon the faith of the managing owner, and because he has promised to pay them; for if by chance he had not so promised, the aforesaid master-workmen would not have worked, and would have made their profit in some other quarter. Wherefore let every managing owner of work, whether he arranges to have it done by the job or by the day, take care what he does and what he does not promise, for it is proper that he perform whatever he may promise, whether he likes it or not. And if the ship-builders or ship-caulkers who work by the job, [and] undertake with the managing owner, to whom the work belongs, that they will deliver it to him on a certain day or at a given time, and between them a certain penalty has been fixed, if the said master-workmen have not finished that work according as they have promised, the managing owner of the work may demand from them the penalty which has been agreed upon between them, and the said master-workmen are bound to pay it without any dispute. And if no penalty has been fixed between them, the said master-workmen are bound to pay to the managing owner of the work the whole loss and the entire damages and the whole expenses which he may have incurred or shall incur, and he ought to be believed upon his oath. Nevertheless it is to be understood that the damages have been caused by the fault and negligence of the aforesaid master-workmen; and if those losses and damages have not been so caused, there is no reason why they should make compensation for them, or pay the penalty, if it has been fixed, since it has

[1] *master-workmen*] Here the term "mestres" is used to signify the master-workmen, who have contracted with the ship-builder to construct and to caulk the ship.

fet; perco, car a les vegades ve y empatxament de Deu o de senyoria, e axi a empatxament de Deu o de senyoria no pot algu als dir ne contrastar, ne es rao que ho pusca. Empero, si lo senyor de la obra no entendra de fer les pagas axi com ab los mestres empres haura, e n'hauran a fer messio, o n'sostendran algun dan; tot en axi es tengut e obligat lo senyor de la obra als sobredits mestres, com los mestres son a ell, e axi semblantment que sia rao e egualtat.

Capitol x. De personer qui vol vendre la part que te en la nau.

Encara [1] deu hom saber, que si algun personer volra vendra la part que haura comencada de fer en la nau, ell ho deu fer a saber al senyor de la nau, e tot en aquella guisa es tengut fer l'altre. E si lo senyor de la nau no vol que y entre, no y pot entrar entro que la nau haia fet viatge, perco es entendre que aquell qui la compraria lo n'poria gitar par malvolenca. E per aquesta rao no poden far encantar los personers ab lo senyor de la nau entro que la nau haia fet viatge; e quant la nau haia fet viatge, ella s'pot encantar del personer al senyor, e del senyor al personer. Empero, lo personer deu donar al senyor de la nau avantatge de donar e de pendre e sia en voluntat del senyor de la nau de dar o de pendre, si donchs encant publich no y havia. E perco fon fet aquest capitol; car lo

[1] *Encara*] Esp. 124. Chapter xii. begins here with the Rubric "De personer qui vulla vendra part que aura en nau o en leyn•co-mensada."

not been caused by their fault; for sometimes there are impediments of God or of the local authorities,[1] and no one can dispute against an impediment of God or of the local authorities,[1] nor is it reasonable to do so. Nevertheless if the managing owner of the work does not intend to make the payments according as he has undertaken with the master-workmen, and has not had to incur expenses, and has not sustained any loss, he is bound and obliged to the said master-workmen equally as they are to him, and as is accordant with reason and equity.

Chapter x. Of the part-owner who wishes to sell the share which he has in the ship.

Likewise it should be known, that if any part-owner wishes to sell the share which he has begun to furnish in a ship, he ought to make it known to the managing owner of the ship, and the other[2] is bound to do as much in the same manner. And if the managing owner of the ship is not willing that he should enter, he cannot enter until the ship shall have completed its voyage, for it is conceivable that he who shall buy it may dismiss the managing owner from malice. And for this reason the part-owners with the managing owner may not cause the ship to be sold by auction until the ship has completed her voyage; and when the ship has completed her voyage she may be sold by auction at the request of the part-owners made to the managing owner, or at the request of the managing owner made to the part-owners. Nevertheless the part-owner ought to give the managing owner the advantage of selling or buying, and it should be at the option of the managing owner to sell or to buy, unless there should be a public auction. And for this reason this chapter was made, for the managing owner

[1] *the local authorities*] Here the term "senyoria" applies to the executive authorities. It is used in a similar manner in the Coutumier d'Oleron.

[2] *the other*] This word would seem to mean the person who is subsequently spoken of as "he who "shall buy it."

senyor de la nau hi haura molta fatiga e molt maltret e haura comencada la nau, que si ell no fos, no fora feta.

Capitol xi. De nau com si pot e s'deu encantar entre lo senyor e les personers.

Segons[1] que diu e demostra en lo capitol desusdit, que nau o leny no s'pot encantar tro haia fet viatge, e es ver, ab que sia nau o leny que de nou se faca, o que algu la hagues comprada ab voluntat, e sabuda de tots los personers o de al major partida; e la ou diu que l'personer deu donar avantatge al senyor de la nau o del leny de donar o de pendre, si donchs encant publich no y haura, axi metex se deu seguir e entendre; perco com no es ne seria justa rao, que si hi havia un personer o dos, qui per leugerya de lur seny o per sobergaria de lur moneda, que els haguessen, deian ne pusquen aportar algun senyor de nau o de leny, en que ells haguessen alguna part, a encant publich, si donchs lo dit senyor de la nau o leny no s'volra, es rao que no s'deia fer. Perque? perco, car a las vegades la major forca dels senyors de les naus o dels lenys han a fer algunes messions que no volen mettre en compte als personers per haver gracia d'ells; e perco, car ells han fe que pusquen ab los dits personers guanyar en moltes de guises e en moltes de maneres, les quals no cal ara dir ne recapitular. E per ventura algunes vegades los dits senyors de les naus o dels lenys han a fornir en la nau o en lo leny, qu'ells fan fer, mes parts qu'ells no cuiden fer com la dita nau o leny comencen, e axi los dits senyors de les naus o dels lenys son esmesos que ells no han diners ne hauran de que n'pusquen haver a les vegades. Encara per altra rao, perco, car lo dit senyor de la nau o del leny hi haura molta fadiga haguda e molt maltret, e molt treball, e molt ansia, e molt afany.

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[1] *Segons*] Esp. 124. The thirteenth chapter commences here with the Rubric "De nau o leyn | "que no s'pot encantar tro aja fet "viatje."

of a ship will have had much fatigue and much trouble in commencing the ship, which without him would not have been made.

Chapter xi. How a ship may and ought to be put up to auction between the managing owner and the part-owners.

According to what has been said and explained in the preceding chapter, that a ship or vessel cannot be put up to auction until it has made a voyage, this is true whether the ship or vessel has been newly built, or whether any one has bought it with the consent of all the part-owners or the majority of them. It has been also there said that a part-owner ought to give to the managing owner of the ship or vessel the option of selling or of buying it, unless there shall be a public auction; it should also follow and be understood that it is not and cannot be a just reason, because one or two part-owners are persons of fickle minds, or have a superabundance of money, that they should be able to constrain the managing owner of a vessel in which they have a part to a public sale; unless, therefore, the managing owner of the ship or vessel should wish it, it is reasonable that it should not be done. Why? Because at times the majority of the managing owners of ships or vessels have to incur certain expenses which they do not wish to set to the account of the part-owners, so as to be in favour with them, and because they have confidence that they can with the said part-owners make profit in many ways and in various manners, which it is not worth while to name or to recapitulate. And by chance sometimes the said managing owners of ships or vessels have to furnish in the ships or vessels which they are having constructed more shares than they calculated to furnish when they commenced the said ship or vessel, and also the means of the said managing owners of the ships or vessels become exhausted, so that they have no money nor wherewithal to procure it at times. Besides for another reason, because the managing owner of the ship or vessel will have much fatigue, much trouble, much anxiety, and much care. Wherefore it is not and

Perque no seria, ne es rao que per fellonia que per un personer o dos, o per desgrat qu'ells haguessen del dit senyor de la nau o del leny lo poguessen aportar a encant publich, que segons les raons desusdites totavia lo n'porien gitar a gran menyscap d'ell metex, e axi lo dit senyor de la nau o del leny romandria des fet, o gran res consumat del seu, e los dits personers no se n'millorarien en res. Perque es rao, que un personer ne dos no l'pusquen portar a encant publich si no u volra lo dit senyor de la nau, per les raons desusdites. Empero, si com la dita nau o leny haura fet viatge, axi com desus es dit, si tots los personers o la maior partida volran encantar o aportar a encant la dita nau o leny al dit senyor, ells ho poden fer, que lo senyor desusdit no pot ne deu en res contrastar, si donchs entre lo dit senyor e los dits personers alguna convinenca o promissio no sera stada feta. E si la dita convinenca o promissio desusdita entre ells feta no sera, la dita nau o leny se deu e s'pot encantar; es a entendre, que los dits personers han poder de destrenyer o de fer destrenyer a la senyoria al senyor de la nau de fer lo dit encant publich; perco car segons dret e rao e egualtat e costuma de qualsevulla cosa que sia fet o mogut algun contrast, totavia apodera e deu esser seguit tot co, que la maior partida o forca volra; e allo se deu seguir, e als no. E axi, si tots los personers o la maior partida o forca volran encantar ab lo dit senyor de la nau o del leny, lo dit senyor de la nau o del leny deu fer encant ab los dits personers en aquesta guisa, que qui mes hi dara, aquell lo deu haver. Mas empero: si tots los personers o la major partida dels

cannot be reasonable that through malice or by reason of a misunderstanding with the managing owner of a ship or vessel one or two part-owners should be able to put it up to a public auction, for according to the reasons above stated they would be able to dispossess him to his great prejudice, and so the managing owner of the ship or vessel would be ruined, or waste a great part of his property, and the said part-owners would be in no respects benefitted. Wherefore it is reasonable that one or two part-owners should not be able to force the ship to be put up to a public auction, if the managing owner is unwilling, on the grounds above stated. Nevertheless, when the said ship or vessel has completed her voyage as above said, if all the part-owners or the greater part of them wish to put up to public auction the said ship or vessel against the will of the said managing owner, they have the power to do so; for the said managing owner cannot and ought not to oppose them in any way, unless there has been a covenant or undertaking made between the said managing owner and the said part-owners. If such a covenant or undertaking has not been made between them, the said ship or vessel may and ought to be put up to auction; and it is to be understood that the said part-owners have power to compel, and may apply to the local authorities to compel the said managing owner to put up the vessel to public auction; for according to right and reason, and equity and custom, in whatever matter there may be a dispute, whatever the majority shall will shall prevail and be followed; and this ought to be followed, and nothing else. And likewise if all the part-owners or the majority of them wish to put up the ship or vessel to auction with the concurrence of the managing owner, the said managing owner of the said ship or vessel ought to put it up to auction in concurrence with the part-owners, and on this condition, that he who shall give most for it shall have it. But nevertheless, if all the part-owners or the greater

personers no encantaran o no volran encantar, lo dit senyor de la nau no es tengut de encantar ab aquells personers, si ell no s'volra; salvo en aytant empero, que si un personer o dos o tres volen encantar o apportar a encant al dit senyor de la nau o leny, los personers o personer han e deuen dir al dit senyor de la nau o leny: "O vos nos dats a rao d'aytant de les " nostres parts, o nos darem a vos a rao d'aytant de " los vostres." E d'aco desusdit poden forcar los dits personers al dit senyor de la nau o leny, vulla lo dit senyor de la nau o leny, o no. E axi lo dit senyor de la nau ha avantatge de dar o de pendre, salves empero totes convinences o promessions o manaments fets entre ells en totes coses. E en axi lo dit senyor de la nau o leny pot forcar als dits personers en totes aytantes guises o maneres com los dits personers poden e deuen forcar al dit senyor de la nau. Empero, si entre lo dit senyor de la nau e los dits personers encant publich se fara, encant publich no ha ne haver senyoria neguna, que tots deuen esser personers simples; si donchs entre ells no haura alguna convinenca empresa que algu d'ells hi deia haver algun honrament o alguna senyoria. Empero, si com ells volran encantar, entre ells empendran que sia donat algun avantatge a aquell qui primer dira, li deu esser dat. E si entre ells alguna convinenca per rao del avantatge desusdit feta ne empresa no sera, lo un no es tengut de donar al altre lo dit avantatge si no s'volra. E per los raons desusdites fou fet aquest capitol.

part of them do not wish to put up the ship to auction, the said managing owner of the ship is not bound to put it up to auction with the other part-owners, if he does not wish it, saving, however, that if one or two or three part-owners wish to put up the ship or vessel to auction against the will of the managing owner, he or they, as the case may be, ought to say to the managing owner, "Either you shall give us so much for our "shares, or we will give you so much for your shares."[1] And in this manner they may force the managing owner to a sale, whether he wishes it or not. And in like manner the managing owner of a ship has the advantage to give or to take, saving always all covenants and agreements and stipulations made between them in such matters. And accordingly the managing owner has the same power to constrain the part-owners in as many forms and modes as the part-owners can constrain him. Nevertheless, if a public auction be made between the said managing owner of a ship and the said part-owners, the said managing owner shall have no advantage over them in the said auction, for they ought all to be on the simple footing of part-owners, unless there shall be some covenant between them that one of them shall have a preference or superiority. Nevertheless, if, when they wish to have an auction, it shall be agreed amongst them that an advantage shall be given to the first bidder, it ought to be given to him. And if no such agreement shall have been made amongst them, no one is bound to give to another any advantage, if he does not wish it. And for the aforesaid reasons this chapter was made.

[1] *shares*] An analogous practice is sanctioned in the Coutumier d'Oleron, Vol. II., p. 343, where part-owners are authorised to offer to one another the option of buying or selling their respective shares.

Capitol xii. L'escriva com deu esser mes, e del juramment et de la fealtat de aquell e de la pena del contrafaent.

Lo senyor[1] de la nau pot metre escriva en la nau, ab consentiment[2] dels personers, salvo[3] que no sia son parent; e deu lo fer jurar ab testimoni dels mariners e dels mercaders e dels personers si en loch ne sera, que sia suau e feel, axi be al mercader com al senyor de la nau, e a mariners, e a pelegrins, e a tota persona que vaia en nau, o que tenga lo cartolari, e que no y scriva res sino lo ver e co que ou de quascuna de les parts, e ell que do dret a quascu. E si lo cartolari havia tengut algun hom menys del escriva, no sera cregut res que y fos scrit. E si l'escriva scrivia co que no degues, deu perdre lo puny dret, e deu

[1] *Lo senyor*] Esp. 124, chapter xiv. begins here with the Rubric, "De scriva a metra en nau o en "leyn."

[2] *ab consentiment*] This reading is supported by MSS. Espagnols 124 and 56.

[3] *salvo*] saul, Esp. 124; soll, Esp. 56.

Chapter xii. How the ship's clerk ought to be appointed, and of his oath and of his duty, and of his punishment if he violates it.

The managing owner of a ship may appoint a ship's clerk[1] without[2] the consent of the part-owners, provided that he be not his relative;[3] and he ought to make him swear in the presence of the mariners and the merchants and the part-owners, if they are in the place, that he will be dutiful and faithful as well to the merchants as to the managing owner of the ship, and to the mariners, and to the passengers, and to every person who sails on board the ship, and that he will keep the ship's book, and that he will write nothing in it except what is true, and what he hears from each of the parties, and that which is right in regard to each party. And if any other person than the ship's clerk has had the ship's book in his possession, nothing shall be believed which is written in it. And if the ship's clerk writes in it anything which he ought not, he ought to lose his right hand, and ought to be branded on the forehead

[1] *a ship's clerk*] It was provided by an ordinance of King James I. of Aragon of A.D. 1258, that no ship should go to sea without a clerk or writer, but no provision is made by that ordinance as to the manner of his appointment. Lois Maritimes, tom. v., p. 340.

[2] *without*] M. Pardessus has felt a difficulty in construing the words *ab consentiment* without the consent, inasmuch as no Lexicon authorises such a translation of the conjunctive particle "ab" in the sense of the Latin "abs" and "absque:" but "abque" is used in the sense of absque in chapter xliv. of the Consolat, and "ab" is used in chapter xcvii. "si ab ell pledeiaran," if they plead against them, in a sense which seems to justify its use here in the sense of "against the will of "the part-owners," that is, without their consent.

[3] *provided he be not his relative*] M. Pardessus finds a difficulty in adopting the literal translation. It is, however, nowhere stated in the statute of Marseilles of 1253–55, nor in the ordinance of James I. of Aragon of 1258, which require every vessel to be provided with a clerk, how the ship's clerk was to be appointed. It may be reasonably conjectured, as the ship's clerk was an officer in certain matters independent of the managing owner, that the usual practice was for the part-owners to nominate him. The provision here sanctioned that the managing owner might nominate him without the consent of the part-owners, provided he was not a relative, would thus be perfectly intelligible, as otherwise the ship might be liable to detention in a port where there were no part-owners, or where the part-owners could not agree in their choice of a ship's clerk.

esser mercat al front ab ferro calt, e deu perdre tot quant haia, axi be si ell ho scrivia, com si altre ho havia scrit.

Capitol xiii. Del poder e del carrech del scriva.

L'escriva[1] ha aytal poder, que l'senyor de la nau no deu res carregar a la nau, sino en presencia del escriva, ni negun mariner no deu levar roba, ne gitar en terra, ne desestibar menys de sabuda del escriva. E si res se pert en la nau, co es a saber, bala o farcell o altra mercaderia, o alguna altra roba que scriva haia scrita o sia stat al carregar, l'escriva la deu pagar. E si l'escriva no ha de que pagar, deu ho pagar la nau; si n'sabia esser venuda, salvat lo loguer als mariners. E l'escriva pot comprar e vendre totes coses, co es a saber, ferramenta e vianda e sagoles e tot aparellament de nau, menys de sabuda del senyor de la nau; empero d'exarcia deu ho fer a saber al senyor de la nau, e lo senyor de la nau als personers qui iran ab ell. E si ells no u volran, lo senyor de la nau ho pot ben comprar, pus que sia necessari a la nau.

Capitol xiv. De custodia del cartolari.

Encara[2] lo senyor de la nau deu fer jurar l'escriva, que ell no dorma en terra menys de les claus de la

[1] *L'escriva*] Esp. 124, chapter xv. commences here with the Rubric, "Capitol quin poder ha l'escriva."

[2] *Encara*] Esp. 124, chapter xvi. commences here with the Rubric "De que es tengut l'escriva."

with a hot iron, and ought to lose all that he possesses, whether he has himself written it or another person has written it.

Chapter xiii. Of the authority and functions of the ship's clerk.

The ship's clerk has such authority, that the managing owner of the ship ought not to load anything on board the ship except in the presence of the ship's clerk,[1] nor ought any mariner to move any goods, or put them on shore, or unstow them, without the knowledge of the ship's clerk. If anything is lost on board, that is to say, bale or bundle or other merchandise, or any other goods which the ship's clerk has inscribed [in his register], or was present at the loading of them, the ship's clerk ought to pay for them.[2] And if the ship's clerk has not wherewithal to pay, the ship ought to pay, even if it be necessary for it to be sold, saving always the wages of the mariners. And the ship's clerk has authority to buy and to sell everything, that is to say, ironwork, and victuals, and ropes, and any apparel of the ship, without the knowledge of the managing owner of the ship, nevertheless as regards the sails and spars he ought to make it known to the managing owner of the ship, and he ought to make it known to the part-owners who may sail in her. And if they are not willing, the managing owner of the ship may well buy them, since they are necessaries for the ship.

Chapter xiv. Of the custody of

Likewise the managing owner of a ship ought to make the ship's clerk swear that he will never sleep on

[1] *in the presence of the ship's clerk*] The ordinance of king James I. does not lay down any minute rules as to the duties of the ship's clerk, but the statute of Marseilles requires his presence when goods are taken on board, and that he should enter them in his register book, "in suo "cartulario."

[2] *the ship's clerk ought to pay for them*] The statute of Marseilles provided that the managing owner of the ship, or the person to whom the owners have committed the charge of the ship, shall pay for any missing articles. The Custom of Valencia of A.D. 1250, on the other hand, declared the owners of a ship to be responsible for the loss of any part of the cargo. The Customs of the Sea appear to have made the ship's clerk responsible in the first place.

caxa en que sera lo cartolari, e nenguna vegada no iaquesca la sua caxa oberta en que tendra lo cartolari, sots la pena desusdita.

Capitol xv. Prerogatives de patro e d'escriva e de personer, e de la fe e creenca que es donada al cartolari.

Tota[1] la messio, axi com de menjar e de beure, deu pagar la nau al senyor e al escriva; e encara deu mes pagar al escriva sabates, tinta, e paper, e pergami. E lo senyor de la nau deu pendre aytal loguer com un dels altres notxers qui van en la nau, e aytantes de portades com de loguer, a la forma del loguer: e deu lo y donar l'escriva e scrivre axi be com dels altres qui seran mariners. E si algun personer ira ab ell en la nau, ell deu fer jurar lo notxer que li diga veritat, ia que pot affanyar aquell personer, e ell que li do allo, e si lo senyor lo volra millorar de res, que ho pot fer. E si l'escriva va a cosiment, ell li deu donar de loguer axi com a un proer[2] dels cominals que y sien; e si lo senyor lo volra millorar que ho pot fer. Lo senyor de la nau pot totavia demanar de compte a l'escriva, sia parent seu o altre; mas senyor de nau no y pot parent metre seu per escriva, si no es ab voluntat dels personers o dels mercaders. E si algun escriva havia stat en blasme de alguna scrivania e de algun furt que hagues fet, no pot levar tal escriva parent seu ne altre. Encara mes, escriva es tengut de dar compte als personers totavia que ells lo n'demanen,

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[1] *Tota*] Esp. 124, chapter xvii. here commences with the Rubric "Capitol de que es tengut lo sen-"yor al scriva."

[2] *un proer*] Espagnol 124 has "axi com a ij. proyers," as much as to two officers of the forecastle. The ordinary reading *un proer*, which is that of the editions of 1494 and 1502, derives some confirmation from the provision of chapter clxxxi., which provides for the mate, if he sails at discretion, the same wages as for the best officer of the forecastle.

shore without the keys of the chest containing his register book,[1] and that the chest in which his register book is kept shall never lie open under the aforesaid penalty. the clerk's register.

Chapter xv. Prerogatives of the managing owner, and of the ship's clerk, and of the part-owners, and of the faith and credit to be given to the clerk's register.

All the expenses as well of eating as of drinking the ship ought to pay to the managing owner and to the ship's clerk, and besides it ought to pay the clerk for slippers, ink and paper, and parchment. And the managing owner of the ship ought to receive for wages as much as any one of the other mates who sail in the ship, and as much freightage as wages in the form of wages, and the ship's clerk ought to pay it to him and enter it as he does in the case of the others who are mariners. And if any part-owner shall go with him in the ship, he ought to make the mate swear that he will speak the truth as to what that part-owner can earn and what he ought to give him; and if the managing owner is willing to increase it, he has the power to do so. And if the ship's clerk serves at discretion,[2] he ought to give to him as much wages as to any of the officers of the forecastle; and if the managing owner is willing to increase it, he has authority to do so. The managing owner may demand an account at all times from the ship's clerk, whether he be his relative or not, but the managing owner cannot appoint his relative to be the ship's clerk except with the consent[3] of the part-owners or of the merchants; and if any ship's clerk has been to blame for any miswriting or for any theft which he has committed, he cannot take on board such

[1] *his register book*] The register of the ship's clerk, "lo cartolari del "scriva de la nau," is mentioned as early as in the ordinance of the prudhommes of Barcelona of A.D. 1341 relative to consuls in Sicily.

[2] *discretion*] See chapter clxxxi.

[3] *the consent*] This is in harmony with the interpretation given to the provision in chap. xii. as to the power of the managing owner to appoint a ship's clerk without the consent of the part-owners.

si que fos exit de la scrivania, o que fos en la nau. Encara mes, es tengut a quascun personer de retre compte de tot co que haura rebut de nolit e despes e venut e comprat. E l'escriva pot pendre de quascun mercader penyora que be li valega lo nolit e les averies, axi be dels personers com des altres e de pèlegrins et de mariners e de tota persona que deia donar nolit o averies. E deuen se donar los loguers e les averies en presentia del cartolari de la nau. Cartolari es mes cregut que carta, car la carta se pot revocar, e lo cartolari no. E tot co que es en lo cartolari mes deu esser cregut e tengut, ab que la nau tenga prois en terra, o l'escriva sia en terra que ho scriva.

Capitol xvi. De que es tengut senyor de nau a mercader e a pelegri.

Si tu vols[1] saber de que es tengut lo senyor de la nau o del leny als mercaders, aci[2] ho pots saber. Lo senyor de la nau es tengut de salvar e de guardar als mercaders e als pelegrins e a tota persona que vaia en la sua nau, axi be al menor com al major, e de ajudar contre tots homens de son poder, e tenir los nech contra cossaris e contra totes persones qui mal los volguessen fer. Encara, es tengut lo senyor de la nau de tenir nech tota la lur roba e lur haver, e de salvar e de guardar, axi com desus es dit. Encara, que deu fer jurar lo notxer e l's panesos e l's personers, e l's mariners, e tots aquells qui y iran e y seran e tots aquells qui penran loguer de la nau, que aiuden a salvar e guardar los mercaders e los lurs havers, e de tots aquells qui en la nau iran, de lur poder: encara mes, que no l's descobren ne facen rasa, ne la-

[1] *Si tu vols*] Esp. 124, chapter xviii. commences here with the Rubric, "Capitol de que es tengut lo "senyor als mercaders."

[2] *aci ho*] These and the following words as far as "als mercaders" inclusively are omitted in Esp. 124.

a ship's clerk, whether he be his relative or not. In addition the ship's clerk is bound to furnish to each part-owner an account of all which he has received for freight and has expended, and has sold or bought. And the ship's clerk may take from each merchant a security for the value of the freight and expenses, as well from the part-owners as from others, and from the passengers and the mariners and every person who ought to contribute freight or expenses. And the wages and expenses ought to be recorded at the time of payment in the clerk's register, for more credit is given to the clerk's register than to any paper, for a paper may be revoked, but not so the register. And all that is in the register ought to be more readily believed and observed, if it is entered when the ship is moored to the shore, or when the ship's clerk is on land.

Chapter xvi. Of the duties of the managing owner of a ship towards the merchants and the passengers.

If you wish to know what are the duties of the managing owner of a ship or vessel towards the merchants, you may learn it here. The managing owner of a ship is bound to protect and guard the merchants and the passengers and every person who sails in the ship, equally whether he be of high or low degree, and to assist him to the utmost of his power against all men, and to defend him against corsairs and all persons who would do him harm. Besides the managing owner of the ship is bound to keep from harm all his goods and effects, and to protect and guard them as above said.[1] And he ought to make the ship's mate and the officers of the forecastle and the part-owners and the mariners, and all those who receive wages from the ship, swear that they will help to save and guard the merchants and their effects and the effects of all on board the ship to the utmost of their power; still further, that they will not disclose the secrets of any one, nor

[1] *as above said*] Chapter xviii. makes more explicit provision on this head, and may be the chapter intended by the reference.

dronici, ni baralla contre algu d'aquells qui desus son dits: encara mes, que no traguen ne meten res en la nau sens sabuda del escriva o del notxer, ne metre ne traure de nit ne de dia que l'notxer o l'guardia no u sabes.

Capitol xvii. Del sagrament que deu fer lo notxer.

Encara[1] mes, deu fer jurar lo notxer per aquella rao que hauran jurat los mariners; e mes encara que ell diga veritat als mercaders de tot co que ells li demanaran, e que no isca de port, ne y entre sens voluntat dels mercaders. Mas lo notxer ha poder de totes altres coses a fer ab consell des panesos, de tallar arbres, e tolre de veles, e junyir a veles, e de pendre una volta, e de fer tot co que pertany a la nau: salvant empero que ell sia suficient a notxer, que sapia compasar e tallar veles e stibar a trau e donar lats e coneixer la volta ab que guanyara ab son contrari. E si aco no sab fer, e ha en la nau panes o proer, qui u sapia fer, aquell notxer deu esser cassat d'aquell loch, e mes aquell panes o aquell proer. E si lo dit notxer ho sap fer, tot co que hom li ha convengut li deu hom observar e tener. E si lo senyor de la nau lo n'volra gitar per malvolenca, e lo notxer sera pagat de son loguer, ell se n'pora anar. E si pagat no es, lo senyor de la nau lo deu pagar. E si aco que convengut haura,

[1] *Encara*] Esp. 124, chapter xix. here commences with the Rubric, "Capitol que deu fer sagrament lo noxer."

provoke a dispute, nor commit a theft, nor make a quarrel against any of the above-mentioned persons, and further that they will not take ashore or put on board anything without the knowledge of the ship's clerk or of the ship's mate, nor take ashore nor put on board anything by night or by day, which the ship's mate or the man of the watch does not know of.

Chapter xvii. Of the oath which the ship's mate ought to take.

In addition, he ought to make the ship's mate swear for the same reason as the mariners and still more, that he will speak the truth to the part-owners respecting all which they may demand of him, and that he will not sail out of nor sail into any port [1] without their consent; but the ship's mate has authority to do all other things with the counsel of the officers of the poop, to cut away the masts, and to reduce sail and to increase sail, and to tack the ship, and to do everything which pertains to the sailing of the ship, it being well understood that he is competent to direct the course of the ship, and that he knows how to measure and cut sails, and to stow cargo, and to heave the ship over, and to know how to tack ship so as to gain on his adversary: and if he does not know how to do all these things, and there is any officer of the poop or officer of the forecastle who knows how to do them, the ship's mate ought to be cashiered, and that officer of the poop or of the forecastle ought to be put into his place; but if the ship's mate can do all these things, all that has been agreed upon with him should be observed. And if the managing owner of the ship wishes to dismiss him from malice, and the ship's mate shall be paid his wages, he may go away. And if he has not been paid, the managing owner of the ship ought to pay him.

[1] *any port*] The consent of the merchants was also required by chap. lvi. to authorise the master to enter a port. The ordinance of king James I. of 1258 also laid it down that the master was not to enter any port, if the merchants were afraid and did not consent.

axi com desus en aquest capitol es ecrit, no sap fer ne pot attendre, tot dan e tota messio que n'fara ne n'sostendra la nau, aquell notxer ho deu de tot pagar. E lo notxer no deu jaure despullat, que sia sa, e deu aiudar a ormeiar a salvament la nau, e fer al pus prest [1] que pusca lo servey de la nau, e si tot [2] ho pot fer no y deu metre terme. E deu se tenir ab lealtat, axi be ab los mercaders, com ab lo senyor de la nau e ab mariners e ab pelegrins e ab tots comunament.

Capitol xviii. De haver qui prenga dan per mal stibar o per altra negligencia.

Senyor [3] de nau ne notxer no deu stibar ne deu fer stibar en vert,[4] ne stibar nengun fax, que hom tema, ne bala ne farcell que damnatge y prengues, pres d'arbres, ne de timonera, ne de sentina, ne de porta, ne de negun altre loch ou mal pogues prendre. Encara,[5] lo senyor es tengut de moltes altres coses als mercaders, haver qui sia mes en nau, si s'banya per cuberta, o per murada, o per arbres, o per sentina, o per timoneres, o per ambrunals, o per porta, o per metre en loch dubtos, o per poch crostam; car lo senyor deu esmenar tot lo dan que l'mercader pendra en aquell haver qui s'sera banyat ab que lo senyor de la nau y bast. E si no y basta deu se n'vendre la nau que personer ni prestador no n'pot res haver; salvo los mariners qui no perden lurs loguers.

Capitol xix. De roba banyada.

Robà [6] que sera trobada banyada [7] en nau o en leny, e sara banyada per aygua de cuberta, o per murades

[1] *pus prest*] plus tost is the reading of Espagnol 124.

[2] *si tot*] si tost, Esp. 124.

[3] *Senyor*] This chapter forms chapters xx. and xxi. in Esp. 124, and chapter xx. commences with the Rubric, "Capitol de roba que "sia stibada pres d'arbres ne de "timoneres."

[4] *en vert*] These words are omitted in MS. Espagnol 124.

[5] *Encara*] Chapter xxi. in Esp. 124 commences here with the Rubric, "Capitol d'aver qui s'banya en "nau o en leyn."

[6] *Roba*] Esp. 124, chapter xxii. here commences with the Rubric, "Capitol de roba que sera atrobada "en nau o en leyn banyada."

[7] *banyada*] This word is omitted in Esp. 124.

And if the ship's mate cannot do and cannot learn to do what he has agreed to do, as above mentioned in this chapter, all the loss and all the expense which the ship may thereby sustain, the mate ought to pay. And the mate ought never to sleep undressed, if he be well in health, and he ought to aid to moor the ship in safety, and to do with the utmost promptness the service of the ship; and if he can do all this, he ought not to make any delay. And he ought to conduct himself with loyalty towards the merchants, as well as towards the managing owner of the ship and the mariners and the passengers and all in common.

Chapter xviii. Of goods, which receive damage from bad stowage or other negligence.

The managing owner of a ship and the ship's mate ought not to stow nor allow to be stowed in a damp place any package, about which a man is afraid, nor any bale or bundle which may be damaged thereby, near the mast, or the rudder, or the well, or the hatches, or any other place where harm may happen to it. Besides, the managing owner is under obligation in many other matters to the merchants with regard to their effects, which are put on board ship, if they become damp from fault of the deck, or of the sides of the ship, or of the masts, or of the well, or of the helm, or of a hatch, or of a door, or from being stowed in a doubtful place, or from excess of bilge water, for the managing owner ought to make compensation for all the loss which the merchants may incur from their goods becoming damp, as far as the means of the managing owner suffice; and if they do not suffice, the ship ought to be sold without the part-owners or the creditors having any preference, saving always the mariners, who are not to lose their wages.

Chapter xix. Of merchandise

The managing owner of a ship or vessel ought to support all the damage which may result from cargo being found spoilt by damp in a ship or vessel, if it has

o encara per fallida de crostam, lo senyor de la nau o del leny deu sostenir tot lo damnatge. E si s'banya per aygua del pla que la nau o le leny faca, e sia suficientment encrostamada, e per murada ne per cuberta no faca aygua, lo senyor de la nau no sia tengut de res esmenar.

Capitol xx. Declaracio del precedent.

Dit es,[1] sclarit e certificat lo capitol desusdit, que si nau o leny fara aygua per murades o per cuberta, que aquella roba que per aygua de murades o de cuberta se banyara e s'guastara, que l'senyōr de la nau es tengut de esmenar als mercaders, de qui aquella roba sia, tot lo dan que els ne pendran ne sostendran. Es entendre, que si la nau o lo leny correra e sostendra tan gran fortuna de mal temps que li fara gitar la stopa de les murades o de la cuberta, e se per aquesta rao que desus es dita la roba que en la nau o en lo leny sera si banyara o s'gastara, lo senyor del leny o de la nau no n'es tengut de alguna esmena a fer a aquells mercaders de qui aquella roba banyada o gastada sera, pus no es fet per sa culpa. E fon fet perco aquest capitol; car a empediment de Deu ne de mar ne de vent ne de senyoria, negu no pot res dir ni contrastar. E per aquella rao metexa nau o leny qui per fortuna de mal temps perdra alcuna exarcia, axi com son timons, o timoneres, o arbres, o antenes, o veles, o alguna altre exarcia, e per rao de qualque sia exarcia, que la nau o leny per fortuna de mal temps perdra, en la nau o en lo leny se banyara e s'guastara alguna roba; lo senyor de la nau no n'sia tengut de

[1] *Dit es*] Esp. 124, chapter xxiii. here commences with the Rubric, "Capitol de nau ho leyn o altre veixel, que fara aygua per murades."

become damp from water coming in through the deck or the sides of the ship, or from defects in the coating of pitch. And if it has become damp from water entering by the floor, although it has been well pitched, and water has not come in through the deck or the sides, the owner of the ship is not bound to make any compensation. spoilt by water.

The previous chapter says, declares, and certifies that if a ship admits water through its sides or its deck, and goods shall become damp and spoilt by the water of the sides or of the deck, the master is bound to compensate the merchants, to whom the goods belong, in respect of all the loss which they may bear or sustain. It is to be understood, however, that if a ship or vessel incurs and has to support such bad weather that the oakum with which the sides or deck are caulked is started, and if for the abovesaid reason the goods which are in the ship or vessel shall become damp and spoilt, the managing owner of the ship or vessel is not bound to make any compensation to those merchants whose goods are made damp or spoilt, since it is not his fault. And for this reason this chapter was made, for no one can say anything against or dispute against an impediment which comes from God, or from the sea, or from the wind, or from the local authorities. And for this same reason a ship or vessel which by misfortune of bad weather shall lose any of its apparel,[1] such as the rudder, or the wheel, or the masts, or the yards, or the sails, or any other tackle, and by reason of such apparel, which the ship or vessel has lost from the misfortune of bad weather, any goods in the ship or vessel shall be wetted or spoilt, the managing owner of the ship is not bound Chapter xx. Explanation of the preceding chapter.

[1] *apparel*] The word "exarcia" is distinguished from "furniments" in the maritime ordinance of 1340, known as the Capitols del Re Don Piedro, the word "forniments" being there used to include oakum and nails.

esmena a fer, pus que per sa culpa no s'sera banyada ne guastada.

Capitol xxi. Encara mes de fet de roba banyada o guastada.

Segons[1] que desus es dit e sclareix; nau o leny qui fara aygua per murades, o per cuberta, per qual rao es absolt lo senyor de la nau o del leny, que no es tengut de esmena a fer de roba que s'y bany, o que s'y guast per banyadura. E en aquesta esmena los nostres antecessors volgueren sclarir co que diu: leny qui fara aygua per pla, sol que sia suficientment encrostamat, lo senyor de la nau o del leny no sia tengut de esmena a fer de roba que per aygua de pla sera banyada. Volent sclarir co, que diu suficientment encrostamat, com deu esser entes, perco que entre los senyors de les naus o dels lenys e los mercaders no pusca haver algun contrast, departiren ho en axi, que tota nau o tot leny en que lo crostam sera pus alt que lo paramijal,[2] o que sia par a par del paramijal, o que sia per tota la nau o per tot lo leny espes e per tot cominal tro sus a les escoes, per aygua que faca per lo pla, no sia tengut de roba, que s'y bany o que s'y guast, de esmena a fer lo senyor de la nau o del leny als mercaders de qui sera aquella roba banyada o guastada. Per qual rao? Perco, car com los mercaders nolieiaren aquella nau o aquell leny guardasen ho si era ayguader o no, e perco com si ells veren e conegueren que aquella nau o aquell leny que ells nolieiren, fera

[1] *Segons*] Espagnol 124, chapter xxiv. here commences with the Rubric, "Capitol de nau o leyn, "que fara aygua per murades."

[2] *paramijal*] paramigal, Esp. 124.

to make any compensation, since it has not been wetted or spoilt from his fault.

Chapter xxi. Further on the subject of goods wetted and spoilt.

According to what has been said above in the case of a ship or vessel which lets in water by its sides or by its deck, it has been declared for what reasons the managing owner of the ship or vessel is exempted from making any compensation for goods that are wetted, or which are spoilt from becoming wet; and by this amendment our predecessors have intended to declare as follows: That if a vessel admits water through her floor, although she has been sufficiently coated with pitch, the managing owner is not bound to make compensation for any goods, which may have been spoilt by the water on the floor. Wishing to declare what is to be understood by the expression sufficiently coated with pitch, in order that there may be no dispute between the managing owners of the ships or vessels and the merchants, they have laid it down as follows, that in the case of every ship or vessel to which a coating of pitch has been applied higher than the gunwale, or on a level with the gunwale,[1] and which shall extend along the entire waist of the ship or vessel, and along the entire length as far as the hawse holes, the managing owner of the ship is not liable for goods, which shall be wetted and spoilt by water which comes through the floor to make compensation to the merchants, to whom such wetted or spoilt goods belong. For what reason? Because when the merchants freighted that ship or vessel they ought to have guarded themselves against her being leaky, and because when they saw and knew that the ship or vessel which they were

[1] *gunwale*] The Editor has considered the word "paramijal" to mean the principal wale or plank which runs outside the whole length of the vessel fore and aft, which he has termed the gunwale, perhaps improperly; the term "the girder" might be more correct, if such a term were in use. Paramezzale in Italian signifies the keelson of a ship, in other words, a timber placed over the keel on the floor timbers, and running along it fore and aft.

aygua per lo pla; si no u digueren al senyor de qui era, ell no l's es de res tengut. Empero, si los dits mercaders lo y digueren o lo y feren entenent, qualque cosa o qualque promessio que ell los faes, aquella es mester que ell los attena. Empero, si lo crostam sera res pus bax que lo paramijal, si la nau o lo leny fara aygua per lo pla, lo senyor de la nau o del leny es tengut de tota roba esmenar que per aygua de pla sia banyada o guastada, per qualque rao, perco que iat sia aco que l'paramijal hi sia mes o posat per tenir fort, o per dar enfortiment a la nau o al leny, axi be y es posat per lo crostam que venga par a par d'ell. E per les raons desusdites feren aquesta esmena e aquest sclariment los nostres antecessors, per rao que contrast no pusca haver entre los mercaders e los bons homens qui van per la mar, qui son senyors de les naus o dels lenys.

Capitol xxii. que s'gasta per rates, o altrement se pert.

Si haver[1] sera gastat per rates en la nau, e no ha gat en la nau, lo senyor de la nau sera tengut de esmenar. Haver qui mes sia en la nau, e sia scrit en capbreu, si s'pert en la nau stant, lo senyor de la nau deu esmenar aquells havers.

Capitol xxiii. De haver gastat per rates per no haver gat en nau.

Si haver[2] sera gastat per rates, e que en la nau no haia gat, lo senyor lo deu esmenar; mas no declara, si en la nau haura gats en aquell loch ou la dita nau stibara, e com d'aqui seran partits los dits gats morran

[1] *Si haver*] Esp. 124, chapter xxv. here commences with the Rubric "De nau o leyn on no aja "Gat."

[2] *Si haver*] Esp. 124, chapter xxvi. commences here with the Rubric "De nau o leyn on no aja "Gat."

freighting was making water through her floor, if they did not say anything to the managing owner, he is not under any liability towards them. Nevertheless, if the said merchants mentioned it and made him aware of it, whatever thing and whatever promise he may have made to them, it is proper that he should observe it. Nevertheless, if the coating of pitch shall be at all lower than the gunwale, and if the ship or vessel shall admit water through her floor, the managing owner of the ship or vessel is bound to make compensation for all the goods which shall be wetted and spoilt by the water on the floor, for although it may be that the gunwale is placed round the ship to make the ship or vessel strong and to give her additional strength, it is also so placed in order that the coating of pitch may come up to a level with it. And for the reasons abovesaid our predecessors have made this amendment and explanation, in order that no dispute may arise between the merchants and the honest men who sail on the sea, and who are managing owners of ships or vessels.

Chapter xxii. Of goods destroyed by rats, or otherwise destroyed.

If goods shall be damaged by rats[1] on board a ship, and there be no cat in the ship, the managing owner of the ship is bound to make compensation. Goods which have been once put on board and are inscribed in the clerk's book, if they are lost whilst in the ship, the managing owner[2] of the ship ought to make compensation for the goods.

Chapter xxiii. Of goods damaged by rats from having no cat on board.

If goods be damaged by rats, and there is no cat on board the ship, the managing owner of the ship ought to make compensation; but it has not been declared in the case where a ship has had cats on board in the place

[1] *rats*] M. Pardessus translates the Catalan word "rates" by the French word "souris," which seems unnecessary, as "rats" are the more formidable pest of a ship and cargo.

[2] *managing owner*] This provision is more in accordance with the general law than that laid down in chapter xiii.

o seran morts, e rates hauran gastat algun haver, ans que sien en loch que gats pusquen haver; si lo senyor de la nau comprara gats, e metra tantost com en lo loch sera, que n'trobara a vendre o a donar o en qualque manera en la nau los metra, no sia tengut de restituir los dans desusdits, pus en culpa d'ell no sera esdevengut.

Capitol xxiv. Si roba pendra dan par esser stibada en vert.

Encara [1] si lo senyor de la nau fara metre res en cant,[2] que es entendre en vert, tot lo damnatge que sia pagat.

Capitol xxv. Com deu esser fet sol.

Senyor [3] de nau o de leny no deu fer, de haver de algun hom mercader, sol a haver d'altre mercader. E si ho fa e l'haver, qui es sol, pendra dan per altre que va desus, lo senyor de la nau es tengut de restituir lo dan.

Capitol xxvi. Declaracio del capitol precedent.

Segons[4] que en lo capitol desusdit diu, senyor de nau o de leny no deu fer de haver del un mercader sol; e si ho fa e l'haver, qui al sol sera, pendra dan, ell es tengut del tot esmenar. Mas, pus no diu ne demostra ne esclarex com deu esser entes ne com no, ne per qual rao. E per la rao desusdita, e perco que entre los mercaders e l's senyors de les naus no pusca haver algun contrast, los nostres antecessors qui primerament anaren e comencaren anar per lo mon, aquesta esmena volgueren esclarir en axi; que si l's mercaders qui en la nau o leny metran roba, si tots o partida hauran roba de pes, si lo senyor de la nau fara sol, tant solament de la roba del un mercader a la roba

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[1] *Encara*] Esp. 124, chapter xxvii. here commences with the Rubric "De roba que sera stibada en vert,"

[2] *en cant*] en entat, Esp. 124. This and the following chapter are omitted in Esp. 56.

[3] *Senyor*] Esp. 124, chapter xxviii. here commences with the Rubric "De sol a fer de roba de "mercader."

[4] *Segons*] Esp. 124, chapter xxix. here commences with the Rubric "De sol a fer de aver de mer- "caders."

where she was laden, and after she has sailed away the said cats have died, and the rats have damaged the goods before the ship has arrived at a place where they could procure cats; if the managing owner of the ship shall buy cats and put them on board as soon as they arrive at a place, where they can find them for sale or as a gift or can get them on board in any manner, he is not bound to make good the said losses, for they have not happened through his default.

Chapter xxiv. If goods receive damage from being stowed in a damp part of the ship.

Further, if the managing owner of a ship shall cause goods to be stowed without a foundation, that is to say in a damp place, he ought to pay the damage.

Chapter xxv. How the foundation should be laid.

The owner of a ship or vessel ought not to make of the goods of any merchant a foundation for the goods of another merchant; and if this should be done, and the goods which are the foundation suffer damage from the goods stowed above them, the managing owner[1] of the ship is bound to compensate the damage.

Chapter xxvi. Explanation of the preceding chapter.

According to what is said in the preceding chapter, that the master of a ship should not make the goods of one merchant a foundation, and if he does so, and they suffer damage, he is bound to make compensation. But since it has not been said, nor shown, nor explained how this ought to be understood, and how not, and for what reason; therefore, and in order that there may be no dispute between merchants and the managing owners of ships, our predecessors, who first voyaged and began to voyage over the world, wished to declare this amendment in this manner: that when merchants put goods on board of a ship or vessel, if all or a part of them have heavy goods, and if the managing owner of the ship uses the goods of one merchant as a foundation for the goods of another, if the goods,

[1] *managing owner*] This provision is more in accordance with the general law than that laid down in chapter xiii.

dels altres, si aquella roba, de que ell haura fet sol axi com es dit, pendra algun dan, ell es tengut de tot a restituir. Mas empero, si en la nau no haura roba de pes, sino tan solement de un mercader (que tota la roba dels altres mercaders sera de bolum); si aquella roba, que en lo sol jussa sera mesa, pendra algun dan ab aquella nau o leny, si es suficientment encrostamat, e que no faca aygua per cubertes ni per murades, ell no es tengut de alguna esmena a fer. Encara mes, perco car es rao e es tostemps estat acostumat, que tota via deu esser fet lo sol jussa de la roba del pes? Per que? Per donar millor regiment a la nau o al levy; que reves seria e cosa perillosa, que metia la cosa del ambolum al sol jussa e la roba del pes al sol sobira, per que met hom la nau o lo leny en juy de perdre, perco car no s'poria regir. Empero, si tots los mercaders o partida y metran roba de pes lo senyor de la nau o del leny deu metre e fer metre de tots cominalment en lo jussa, perco que dany no li n'pusca venir, axi com desus dit es. E per les raons desusdites feren aquesta esmena e aquest declarament los nostres antecessors, per co que contrast ne treball ne mal no pusca haver ne esser entre los senyors de les naus o des lenys, e los mercaders qui van per lo mon.

Capitol xxvii. De roba qui s'banyara al carregar o descarregar.

Mas,[1] si vols saber que un farcell o una bala o altre haver se banya al carregar o descarregar, lo senyor ne la nau no es tengut. Tots los damnatges que son damunt dits e s'diran als capitols de mar qui paga la nau, lo senyor y met sa part, e quascun personer per si, car tot ho paga la nau.

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[1] *Mas*] Esp. 124, chapter xxx. here commences with the Rubric "De roba que s' banya a carregar o a descarregar."

which have been used as a foundation as above said, receive any damage, he is bound to make full restitution. Nevertheless, if in the ship there are no heavy goods, except only of one merchant, the whole of the goods of the other merchants being light goods, if the goods which shall be stowed beneath as a foundation for the rest shall receive any damage within the ship or vessel, if it has been sufficiently coated with pitch, and makes no water through the deck or the sides, the managing owner is not bound to make any compensation. Besides it is both reasonable, and it has been at all times customary, that the foundation below should always be made with heavy goods. Why so? To give better trim to the vessel itself; for it would indeed be a perilous thing to place light goods at the bottom and heavy goods above them, for it would be to place the ship in danger, as she could not be steered. Besides, if all the merchants or a part of them put on board heavy goods, the managing owner of the ship or vessel ought to stow away some of each in common to make a foundation below, in order that danger may not accrue to them, as aforesaid. And for the aforesaid reasons our predecessors have made this amendment and explanation, that no dispute or quarrel or mischief may arise between the managing owners of ships or vessels and the merchants who travel over the world.

Chapter xxvii. Of goods which become wet in loading or unloading.

But you must know that if a bundle or a bale, or other effects, become wetted in loading or unloading, neither the managing owner nor the ship is responsible for it. All the damages which are above mentioned, or will be mentioned in the Chapters of the Sea,[1] which the ship is to pay, the managing owner pays in proportion to his share, and each part-owner in proportion to his share, for the ship has to pay the whole.[2]

[1] *Chapters of the Sea*] See chaps. cxli. and clxxxii.

[2] *the whole*] "Tot ho" is equivalent to "totum illud" in Latin.

Capitol xxviii. Del carregar e descarregar les robes.

Encara,[1] devets saber que lo senyor de la nau deu fer carregar la roba e descarregar, si ab ell ho emprenen los mercaders; e si no ho ha per convinenca, los mercaders se deven posar (aci es entendre que sien en loch agrest) ab los mariners de carregar e de descarregar.

Capitol xxix. A que son tenguts o no tenguts los mariners en lo carregar.

Mas,[2] los mariners son tenguts de pendre lo haver a la porta, e di stibarlo no n'son tenguts, si lo senyor de la nau no u ha promes als mercaders. E si promes ho ha, puys lo senyor de la nau ha se n'a posar ab los mariners, si los mariners se volen. Mas, si lo senyor del leny es en loch agrest, e ells no troben bastaixs o homens qui u facen per diners, los mariners son tenguts de carregar e descarregar, e deven esser pagats axi com lo notxer conexera que pertanga a aquells qui hauran carregat o descarregat. E aquest capitol fon fet per co que l'senyor de la nau no n'pogues perdre son viatge, ne los mercaders. Mas, si homens y ha qui carreguen e descarreguen per moneda, no y son tenguts los mariners.

Capitol xxx. De stibadors e de vitualla que l'mercader metrà en nau.

Encara,[3] es tengut lo senyor als mercaders de donar homens qui sapian la nau stibar, si la nau stiba a trau. E los mercaders deven los pagar. E lo senyor de la nau es tengut al mercader de aportarli la sua roba, caxes, vianda de meniar, tanta que sia bastant al mercader. Mas, si lo mercader volia metre vianda per revendre,

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[1] *Encara*] Esp. 124, chapter xxxi. has prefixed to it the Rubric "Capitol de roba a carregar o a "descarregar."

[2] *Mas*] Esp. 124, chapter xxxii. here begins with the Rubric "Mariners son tenguts de rebra l'aver "a la porta."

[3] *Encara*] Esp. 124, chapter xxxiii. here commences with the Rubric "Capitol de nau qui stibara "a trau."

Chapter xxviii. Of loading and unloading goods.

Besides, you ought to know that the managing owner of the ship ought to cause the goods to be loaded and unloaded; and if there is no agreement on this subject, the merchants ought to make an arrangement with the mariners, if the ship is in a desert place, to load and unload.

Chapter xxix. What are the obligations of the mariners in respect of loading the goods.

The mariners are bound to carry the cargo to the hatches, but they are not bound to stow it, unless the managing owner has so promised to the merchants. And if he has so promised, he must make an arrangement with the mariners, if the mariners are willing. But if the managing owner of the ship is in a desert place, and they cannot find porters or men who will do it for money, the mariners are bound to load and unload,[1] and ought to be paid, as the mate shall adjudge to be proportionate to what they have loaded or unloaded. And this chapter was made in order that neither the managing owner of the ship nor the merchants should lose their voyage. But if men can be found who will load or unload for money, the mariners are not bound to do the work.

Chapter xxx. Of stowers, and of victuals which the merchant shall put on board the ship.

Besides, the managing owner of the ship is bound to the merchants to supply them with men who know how to stow a ship, if the stowage is to be done by hoisting. And the merchants ought to pay them. And the managing owner of the ship is bound to the merchant to carry for him his goods, his chests, his provisions, as much as will be sufficient for the merchant. But if the merchant, or any one in his place,[2] wishes to put on board provisions or other things amongst the victuals[3]

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[1] *load and unload*] See chapter cxci.

[2] *any one in his place*] his agent or representative.

[3] *victuals*] M. Pardessus has omitted to translate the word "companya," but the Dutch translation by Westerven has the word "victalie," which the Editor has adopted.

o altres coses en la companya o hom per ell, deu ne donar nolit a la nau.

Capitol xxxi. Com lo mercader deu haver plaea en nau.

Lo senyor[1] de la nau deu donar places als mercaders, e lo notxer deu fer venir lo mercader e l'escriva, e aquell qui mes del nolit dara, deu millor placa haver.

Capitol xxxii. De plaea, desferra, e servicials del mercader.

Senyor[2] de nau es tengut a mercaders de levar sa caxa, e son lit, e son servicial, e companyo suficient al viatge on anar dega, e deu li donar placa on iaga. E si l's mercaders daran tan poch nolit, (co es a saber, si va en Acra o en Alexandria o en Armenia o devers aquelles parts, si dona de vint barcelles en jus de nolit,) no li deu esser tengut lo senyor de la nau de portar caxa ne servicial ne companyo, menys de nolit, ne deu haver placa de mercader.

Capitol xxxiii. Declaracio del sobredit.

Si nau[3] o leny va en Barbaria o en Spanya o n've, e lo mercader no dona vint besans de nolit, per aquella rao meteixa axi com desus est dit.

Capitol xxxiv. De vianda furtada.

Lo senyor[4] de la nau deu esmenar tota vianda, que sia emblada per ma de mariner en nau.

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[1] *Lo senyor*] Esp. 124, chapter xxxiv. here commenees with the Rubric "Capitol de donar plassa "a mercaders."

[2] *Senyor*] Esp. 124, chapter xxxv. here commences with the Rubric "Capitol de donar plassa a mer- "caders."

[3] *Si nau*] Esp. 124, ehapter xxxvi. here begins with the Rubric "De "nau ho leyn qui vaja en Bar- "berja.

[4] *Lo senyor*] Esp. 124, ehapter xxxvii. here begins with the Rubric "De vjanda qui sia emblada en "nau o en leny."

for his own supply, with the intention to sell them again, he must pay freight for them to the ship.

Chapter xxxi. What place the merchant shall have on board.

The managing owner of the ship shall assign to the merchants their places; and the mate ought to make each merchant and the ship's clerk come before him, and he who will pay the highest freight ought to have the best place.

Chapter xxxii. Of the place, of the baggage, and of the servants of the merchant.

The managing owner is bound to the merchant to carry his chest and his bed, and his servant, and victuals sufficient for the voyage on which he is going, and ought to assign him a place where he may sleep. And if the merchant pay very little freight, that is to say, if the voyage is to Acre, or to Alexandria, or to Armenia, or divers other parts, and he put on board twenty barcells[1] in right of freight, the managing owner is not bound to carry for him a chest, nor a servant, nor victuals without paying freight for it, nor ought he to have the place of a merchant.

Chapter xxxiii. Explanation of the preceding.

If a ship or vessel goes to the Barbary coast or to Spain,[2] or she returns, and the merchant does not pay as much as twenty besants for freight, he may for that reason be treated as above said.

Chapter xxxiv. Of provisions stolen.

The managing owner ought to make compensation for all the provisions which shall be stolen by the hands of the mariners on board.

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[1] *twenty barcells*] Dieci ducati is the Italian translation, which is also adopted in the Dutch translation.

[2] *to the Barbary coast or to Spain*] The same language is used in chap. ccxxix. The term Spain is probably used here to denote such portions of the Iberian peninsula as were not subject to the kings of Aragon. Capmany translates Espanya here as España, but in chap. ccxxix. as Andalucia. It would appear from the Ordinance on the subject of maritime assurance published by the magistrates of Barcelona in 1484, which is inserted in the edition of the Consulate published at Barcelona in 1494, that Barberia was used to signify the African coast both within and without the straits of Gibraltar. Espanya on the other hand is used in the Ordinance for Cruisers of A.D. 1356 for the coasts of the Iberian peninsula within the straits, not subject to the kings of Aragon.

Capitol xxxv. De empediment de mercader.

Senyor[1] de nau deu sperar los mercaders, si empediment hi sera. E si[2] lo senyor de la nau es stat pagat del nolit del mercader, e lo mercader ne trau la roba per paor o per empatxament, lo senyor no li es tengut de retre. Mas, totavia que haia bones noves, li es tengut de dos en dos mesos de levar e de anar ab la roba, la ou li haura convengut, e ab la roba o mercaderia (que axi fa la roba a entendre).

Capitol xxxvi. De paor de mercader.

Si lo[3] mercader ha mes son haver en nau, e per paor que haia de sos enemichs le n'vol gitar, co es per armada o per cossaris, pot le n'gitar, ab que sia cert o no cert, ab que los altres mercaders le n'giten. Mas, si es un mercader qui haia paor e per altra rao, que altres mercaders, la major forca, no la n'gitaran, haia a pagar nolit o posarse ab lo senyor de la nau, en tal guisa, que se n'tenga lo senyor de la nau per pagat.

Capitol xxxvii. Com a mercader qui s'tema, deu esser livrada sa sa roba.

Lo senyor[4] de la nau deu donar e retre tot son haver al mercader, sia pagat o no pagat, que hom sia cert que l'mercader se tem, que nau o leny sia armada de que ell se tema. E quant ell no s'tema, aquella mercaderia, si s'vol lo senyor de la nau, lo deu tornar en la nau; e si ell ven e no li torna, que se n'deu posar ab lo senyor de la nau que li do aytant de nolit com li donaba, si met altra roba a

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[1] *Senyor*] This chapter forms chapters xxxviii. and xxxix. in Esp. 124; and chapter xxxviii. has prefixed to it the Rubric "Empeyment."

[2] *E si*] Chapter xxxix. commences here in Esp. 124 with the words "E "sil senyor," and has prefixed to it the Rubric "Capitol de paga le nolit."

[3] *Si lo*] Esp. 124, chapter xl. here commences with the Rubric "Ca- "pitol d'aver qui sia mes en nau."

[4] *Lo senyor*] Esp. 124, chapter xli. here commences with the Rubric "Capitol d'aver a retra a "mercaders."

Chapter xxxv. Of impediments of the merchant.

The managing owner of the ship ought to wait for the merchants, if they meet with any impediment.[1] If the managing owner of the ship has been paid for the freight of goods, and the merchant withdraws the goods from fear or from an embargo, the managing owner is not bound to return the freight. But as soon as he has good news, he is bound within two months to receive and to sail with the goods to the place agreed upon, and with the goods or merchandise, for so the word goods is to be understood.

Chapter xxxvi. Of fear on the part of the merchant.

If the merchant has put his effects on board the ship, and, from fear which he has of his enemies, wishes to disembark them, that is in the case of a fleet of armed ships or a corsair, he may disembark them whether he is certain or not that the other merchants will disembark their goods. But if there be one merchant who has fear for some other reason, and the other merchants, the majority, do not disembark their goods, he has to pay the freight or make a composition with the managing owner of the ship, in such manner that the managing owner may consider himself to be paid.

Chapter xxxvii. How the merchant, who is in fear, should have his goods delivered to him.

The managing owner of the ship ought to give up[2] and return to the merchant all his effects, whether he be paid or not, if he is certain that the merchant is afraid, and that the ship or vessel is an armed vessel of which he should be afraid. And when he is no longer afraid he ought to re-embark the goods in the vessel, if the managing owner requires it; and if he sells and does not re-embark them, he must arrange with the managing owner of the ship to pay him as much freight as he

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[1] *impediment*] This subject is treated more fully in chapters lviii., ccxxi., and ccxxxvii.

[2] *give up*] The circumstances under which the merchant may disembark his merchandise are more fully discussed in chapters lviii. and lix.

multiplicament de quintalades; perque lo senyor de la nau ne ha fet son damnatge de donar a meniar e loguer a mariners, e d'altres coses que haura fet messio.

Capitol xxxviii. De que es tengut patro a mercader qui nolieia a quintalades.

Mercader[1] qui nolieiara nau o leny a quintalades, co es a saber, que lo mercader deia dar quantitat de quintalades a la nau o al leny, lo senyor de la nau o del leny sia tengut al mercader de levar mes lo quart de les quintalades en axi., que si nolieia ccc. quintals, lo mercader ne ha cccc., que l'senyor los y deu levar, en tal forma que l'dit mercader deia empendre ab lo senyor del leny aquella part de les quintalades a un temps qui sia suficient. E si en aquell temps empres, lo mercader no les y volia metre, que l'dit senyor pusca nolieiar a altres mercaders a compliment de son carrech. E si lo dit mercader se volia abstraure de anar en lo dit viatge, lo qual hauria fermat a quintalades sabudes, e era lo fermament fet ab carta o ab testimonis o scrit en capbreu de nau o de leny per scriva jurat, lo dit mercader deu refer totes messions que l'senyor hagues fetes per rao d'aquell viatge, si ans que res hagues carregat se n'abstrahia. E si despuys que hagues alguna cosa carregada, lo mercader so abstrahia del viatge, deu donar la meytat del nolit, lo qual hauria fermat, a la nau o al leny, menys de tot contrast, e lo senyor del leny deu pagar la meytat del loguer als mariners, si la nau o lo leny ha tanta quantitat de nolit que fos la meytat d'aco

[1] *Mercader*] Esp. 124, chapter xlii. here commences with the Rubric "De nau o leyn, qui sera nolieiat a quintalades."

would pay, if he put on board other goods of a proportionate number of quintals, inasmuch as the managing owner of the ship has incurred loss by finding food for and by paying wages to the mariners and by furnishing other expenses.

Chapter xxxviii. What is the obligation of the managing owner towards the merchant, who freights by the quintal.

When a merchant freights a ship or vessel by the quintal, that is to say, when he ought to put on board the ship or vessel a certain number of quintals, the managing owner of the ship or vessel is bound to the merchant to carry one quarter more of quintals in addition; thus if he has freighted three hundred quintals, and he has four hundred [to put on board], the managing owner of the ship is bound to carry them, on condition that the said merchant makes an arrangement with the managing owner of the ship for the surplus portion of the quintals within a sufficient time. And if, when that time is finished, the merchant is not willing to put them on board, the said managing owner may let his ship to other merchants to complete his cargo. And if the merchant wishes to give up going on the said voyage for which he has agreed to load a certain number of quintals, and the agreement has been made on paper, or with witnesses, or in writing in the ship's book entered by a sworn scribe, the said merchant ought to reimburse all the expenses which the managing owner has made by reason of the said voyage, if he does not give up his voyage before he has put anything on board. And if after he has put anything on board the merchant shall give up his voyage, he ought to pay the half of the freight,[1] which he had agreed to, for the ship or vessel without any dispute, and the managing owner of the vessel ought to pay to the mariners half their wages, if the ship or vessel has so much freight, as would be the half of her freight,

[1] *half of the freight*] This question is more fully discussed in chapters lvii. and lx.

que poria haver com hauria son ple. Lo senyor de la nau deu apparellar de exarcia e de altres aparellaments la nau, en axi com haura promes als mercaders, e deu esser apparellat a aquell temps que sera empres entre ells: e lo mercader deu haver espatxada la nau o lo leny al temps empres entre ell e lo senyor de la nau. E lo mercader deu pagar lo nolit, menys de tot contrast, e tot senyor de nau o de leny se puga retenir en penyora per rao del nolit tanta de roba, que valega quatre tants com lo nolit que haver deu.

Capitol xxxix. De mercader qui nolieiara e puys se abstraura.

Mercaders[1] qui nolieiaran quantitat de roba e de quintalades e deian dar tot son ple a alguna nau o algun leny; si l's mercaders se abstrauran de donar e de livrar aquella roba o aquella quantitat de quintalades o tot aquell carrech que nolieiat hauran, abans no l'hauran fet tirar a mar de tot o lo maior partida, no son tenguts de donar a aquell senyor de aquella nau o de aquell leny a que ells ho hauran nolieiat, sino tant solament la messio que l'senyor de la nau o del leny haura feta per aquell viatge. E si per ventura los mercaders hauran feta tirar a mar tota aquella roba o la major partida que ells nolieiada hauran, e los dits mercaders se abstrauran de anar al viatge, ells son tenguts de pagar al senyor de la nau o del leny, que ells hauran nolieiada, del terc del nolit lo qual ells li hauran promes de donar com ells lo nolieiaren. Empero, si los dits mercaders se abstrauran del viatge apres que hauran alguna cosa carregada, ells son tenguts de donar al senyor de la nau o del leny la meytat del nolit que fermat li hauran. E si ells

[1] *Mercaders*] Esp. 124, chapter xliii. here commences with the Rubric "De nau o leyn qui sera nolieiat a quintalades."

if she had her full cargo. The managing owner ought to furnish the fittings out [1] and other appurtenances of the ship according as he shall have promised to the merchants, and she ought to be fitted out by the time agreed upon between them, and the merchant ought to have the ship or vessel despatched at the time agreed upon between him and the managing owner of the ship. And the merchant ought to pay the freight without any dispute; and every managing owner of a ship or vessel may retain in pledge on account of the freight as much of the goods, as would be worth four times the value of the freight, which is owing to him.

Chapter xxxix. Of the merchant who freights a cargo and afterwards abandons his voyage.

Merchants who have freighted a quantity of goods and of quintals, and who ought to complete a full cargo for a ship, if they withdraw from giving or delivering those goods or that number of quintals or that complete cargo which they have freighted, before they have brought it or the greater part of it down to the sea, are not bound to give to the managing owner of the ship or vessel which they have chartered more than the expenses which the managing owner of the ship or vessel has incurred for that voyage. And if by chance the merchants have brought down to the sea all the goods or the greater part which they have freighted, and the said merchants abandon the voyage, they are bound to pay to the managing owner of the ship or vessel, which they have chartered, the third of the freight,[2] which they promised to give when they agreed to charter the vessel. Nevertheless if the said merchants abandon the voyage after they have placed any goods on board, they are bound to pay to the managing owner of the ship or vessel the half of the freight, to which they had agreed. And if they have

[1] *fittings out.*] The principle here involved is further discussed in chapters xlvii. and cxlv.

[2] *the third of the freight*] The penalty, as laid down in chapter lvii. is the whole freight.

hauran carregat tot co que hauran a carregar, e la nau o lo leny no haura feta vela, e ells se volran abstrer del viatge, ells son tenguts de pagar la meytat del nolit que ells li hauran fermat. E si per ventura la nau o lo leny on ells hauran mesa la lur roba, haura feta vela, e ells se volran abstrer del viatge, ells son tenguts de donar al senyor de la nau o del leny tot lo nolit que fermat li hauran. E tot co que desus es dit deu esser fet menys de tot contrast. Empero, es axi a entendre que per qualsevol de aquestes raons desusdites que los dits mercaders se volran abstrer del viatge, en lo qual han fermades quantitat de quintalades o hauran nolieiat de lot alguna nau o algun leny, que sia menys de tot frau. E si lo senyor de la nau o del leny pora provar o mostrar frau algu o escusa que no sia justa, aquells mercaders son tenguts de donar e de livrar tot co que nolieiat li hauran o que se n'avenguen ab ell, si ell volra fer alguna avinenca. Que rao es, que axi com lo senyor de la nau o del leny es tengut e obligat als mercaders, que los mercaders sien e deuen esser tenguts al senyor de la nau o del leny, si donchs per justes raons no se n'poran escusar, axi com desus es dit.

Capitol xl. De mercader que haura nolieiada roba e puix la ven.

Si alguns[1] mercaders nolieiaran nau o leny de tot e de partida, e que li deian donar quintalades sabudes, si los dits mercaders se staran de anar al viatge per rao de venda que ells hauran feta de la lur roba, la qual roba o mercaderia ells hauran nolieiada a algun senyor de alguna nau o d'algun leny, ells son tenguts de pagar aquell nolit, lo qual ells li haurien promes de donar. Par qual rao? Perco, car es a entendre, que aquells mercaders qui aquella roba havien nolieiada, que a la venda que ells ne faran, que ells y guanyen, e encara ultra lo guany que ells y fan, que s'y enclou

[1] *Si alguns*] Esp. 124, chapter xliv. here begins with the Rubric "Nau o leyn qui sera noliejat a certas quintalades."

put on board all which they have to load, and the ship or vessel has not set sail, and they wish to abandon the voyage, they are bound to pay the half of the freight to which they had agreed. And if by chance the ship or vessel, on which they have embarked their goods, shall have set sail, and they wish to abandon their voyage, they are bound to pay to the managing owner of the vessel all the freight to which they had agreed. And all as abovesaid ought to be done without any dispute. Nevertheless it is to be understood that for whichever of the above reasons the said merchants wish to abandon the voyage for which they have agreed to embark a quantity of quintals or have chartered the whole ship or vessel, that it be done without fraud. And if the managing owner of the ship can prove or shew any fraud or excuse which is not just, the merchants are bound to pay and deliver to him, all what they have freighted, or to compound with him, if he is willing to make any composition. For it is reasonable that according as the managing owner of a ship or vessel is under obligation to the merchants, the merchants should and ought to be under obligation to the managing owner of the ship or vessel, unless for just reason they can excuse themselves, as is above mentioned.

Chapter xl. Of the merchant, who has freighted goods and afterwards sold them.

If several merchants have chartered a ship either in whole or in part, and they ought to put on board a given quantity of quintals, if the said merchants desist from the voyage by reason of a sale which they have made of their goods, which goods or merchandise they have freighted to the managing owner of a ship or vessel, they are bound to pay the freight, which they have promised to give. For what reason? Because it is to be understood that those merchants who have freighted the goods, have gained by the sale which they have made, and besides in the gain, which they have made, have in-

aquell nolit, que ells havien promes de donar a aquell senyor de la nau o del leny que ells havien nolieiat. E es rao, que pus los mercaders guanyen e fan lur prou, que los senyors de les naus o dels lenys no y deuen haver dan. Empero, es axi a entendre, que si la nau o lo leny qui nolieiat sera, devra carregar en aquell loch on lo contracte del nolit sera stat fet, deu esser mes en poder de dos bons homens de la art de la mar, que sien dignes de fe, e aquella cosa que ells ne diran, allo n'deu esser seguit: que lo senyor de la nau ne l's mercaders no y deuen ne y poden en res contrastar. E aquell pati que lo senyor de la nau o del leny fara ab los mercaders, en aquell pati per aquell deuen esser los mariners. Empero, si aquella nau o aquell leny qui nolieiat sera, devia anar a carregar en algun altre loch, e la nau o lo leny sera aqui iunt on devia carregar, e los dits mercaders hauran venuda aquella roba que ells nolieiada li havien, e los mercaders livrar no la li poran, ells son tenguts de donar e de pagar tot aquell nolit que ells promes havien de donar a aquell senyor de aquella nau o de aquell leny lo dia que ells nolieiaren, sens tot contrast. Per que? Perco, car es rao que los mercades sien tenguts e obligats als senyors de les naus tot axi com los senyors de les naus son als mercaders: que dur fet

cluded the freight which they have promised to pay to the managing owner of the ship or vessel which they have chartered. And it is reasonable, since the merchants have gained and made a profit, that the managing owner of the vessel should not incur a loss. Nevertheless it is to be understood that if the ship or vessel which has been chartered ought to load in the place, in which the contract of freight was made, it ought to be submitted to the decision of two Prudhommes [1] of the Corporation of Navigators, who are worthy of trust; and that thing which they shall say, ought to be in all respects followed, for neither the managing owner of the ship nor the merchants ought to dispute it. And that bargain which the managing owner of the ship shall make with the merchants ought to be observed in all respects by the mariners. Nevertheless, if that ship or vessel which has been freighted ought to go and load a cargo at another place, and the ship or vessel shall have arrived there where it ought to load its cargo, and the said merchants have sold the goods which they had freighted, and the merchants cannot deliver them, they are bound to give and pay all the freight which they have promised to give to the managing owner of that ship or of that vessel, which they have chartered, without any dispute. Why so? Because it is reasonable that the merchants should be bound and obliged to the managing owner of a ship in the same degree as the said managing owner is bound

[1] *Prudhommes*] The Editor is of opinion that the expression *bons homens* is here to be construed as the equivalent of *boni homines*, which was a technical term for the jurats or prudhommes of the middle ages, and not as the ordinary description of men of substance and of trust. The Ordinance of king James of Aragon, A.D. 1258, speaks of the "Probi homines Ri-" pariæ Barchinonæ," who were evidently a guild or corporation of navigators, as they are styled in the concluding part of the same ordinance Universitas Proceruum Ripariæ Barchinonæ. In a similar manner, the magistrates who compiled the Ordinance of Trani, A.D. 1063, are described as "Con-" suli in arte de mare," which M. Pardessus has rendered "Con-" suls de la corporation des naviga-" teurs." Lois Maritimes t. v. p. 237.

seria, si los mercaders no eren tenguts als senyors de les naus axi com ells son tenguts als mercaders, que porie l's tornar a gran dan: e no seria ben fet, ne seria justa rao que los mercaders fessen de lur prou, e los senyors de les naus fossen desfets en fe dels mercaders. Empero, si aquella nau o aquell leny que nolieiat sera, deura anar carregar en algun loch, los mercaders lo y faran a saber abans que ella partesca d'aquell loch on sera stada nolieiada, ne encara no haura feta vela, aquell nolit aytat deu esser mes en poder de bons homens, axi com ia es desus dit. E par les raons desusdites fon fet aquell capitol.

Capitol xli. Port de quintalades.

Lo senyor[1] de la nau es tengut al mercader de portar les quintalades que haura nolieiades del mercader, e'lo mercader deu pagar lo nolit segons que empendra ab lo senyor de la nau.

Capitol xlii. De roba corregada sens sabuda del patro.

Mas, si[2] lo mercader carrega mes robes que no haura nolieiades, sens dir res, lo patron pot haver lo nolit que vol.

Capitol xliii. De poch nolit e molt nolit.

Facam[3] compte, que un mercader dona al senyor de la nau un millares de quintal e ha li assigurats tants quintals com seran, e puix ve un altre mercader e donali del quintal cent besants; lo senyor de la nau deu levar axi be aquell de un millares com aquell de cent besants, e metra axi en bon loch; car guartse[4]

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[1] *Lo senyor*] Esp. 124, chapter xlv. commences here with the Rubric "Senyor de nau es tengut "de portar les quintalades, que lo "mercader aura noliejades."

[2] *Mas si*] Esp. 124, chapter xlvi. commences here with the Rubric "De roba noliejada a poch nolit, "quant pot la carrech.

[3] *Facam*] Esp. 124. This chapter is divided into two chapters, and chapter xlvii. here commences with the Rubric "Capitol de paga de "noljt.

[4] *car guartse*] Esp. 124, chapter xlviii. here commences with the Rubric "Capitol de convinensa di "senyor de nau," followed by the text "Empero guart si," &c.

and obliged to the merchants, for it would be hard if the merchants were not bound to the managing owners of vessels just as the latter are to the merchants, for it might turn to their great loss, and it would not be a fair result, nor would it be just that the merchants should make profit with their goods and the managing owners of the vessels should be undone by trusting to the merchants. Nevertheless, if that ship or that vessel which has been chartered, ought to go to another place to load, and the merchants shall make it known before she departs from the port where she was chartered, and before she hoists sail, the freight shall be referred to the decision of two Prudhommes, as has been above mentioned. And for the reasons aforesaid this chapter was made.

Chapter xli. The carriage of quintals.

The managing owner of a ship is bound to the merchant to carry all the quintals which have been freighted by the merchant, and the merchant[1] ought to pay according to what he has agreed with the managing owner of the ship.

Chapter xlii. Of goods put on board without the knowledge of the managing owner.

But if the merchant places on board more goods than he has freighted, without saying anything, the managing owner may have such freight as he will.[2]

Chapter xliii. Of low freight and of high freight.

Let us suppose that a merchant gives to the managing owner of a ship a millares per quintal, and has assured him of a certain number of quintals, and then comes another merchant and gives him a hundred besants per quintal, the managing owner of the vessel is bound to carry equally well the quintals freighted for a millares as those freighted for a hundred besants, and shall place

[1] This paragraph is omitted in MS. Espagnol 124.

[2] This subject is more fully discussed in chapters lv., lxix., lxx., cxlii., ccxii.

lo senyor de la nau, que axi be esmenaria aquell de un millares, si mal prenia, com aquell de cent besants. E no deu jaquir de levar la roba d'aquell del millares, fins que haia mes son ple, axi com si daba dos cents besants del quintal; e esli tengut lo senyor de la nau de levarli la roba fins a compliment. Mas levat aquell compliment de les dites quintalades, lo senyor de la nau li pot demanar aytant com se volra de quintalada, si lo mercader no ha empres ab ell, que per aquella rao li do de aquelles qui metra mes avant; e deu li ho fer a saber al terme que empendran ab dos.

Capitol xliv. Si patro lexara roba nolieiada.

Si algun[1] senyor de nau o de leny nolieiara o haura nolieiada alguna roba de mercader o scriva per ell ab carta o ab testimonis, o entre ells sera dada palmada, o sera scrit en lo cartolari de la nau o del leny, lo senyor de la nau o del leny es mester que leu la dita roba que nolieiada haura. E si ell levar no la pot e ell la jaquira tota, si l's mercaders li diran que si ell no la leva, que romanga per sua, e si lo dit senyor de la nau o del leny no se n'avendra ab los dits mercaders ans que d'aqui partesca, aquella roba que ell axi com desus es dit jaquira o haura jaquida, deu romandre per sua; e lo dit senyor de la nau o del leny es tengut de

[1] *Si algun*] Esp. 124, chapter xlix. commences here with the Rubric "Capitol de esmena de roba."

them in an equally good place,[1] for the managing owner of the ship must take care of them equally, as he must make compensation for the goods freighted, for a millares, if they are damaged, just as he must for those freighted for a hundred besants. And he ought not to refuse to load the goods of him who has paid a millares for freight, as long as he has not filled his vessel, just as if he paid two hundred besants, and the managing owner is bound to load the goods until he has his complement on board. But when once the complement of the said quintals is completed, the managing owner of the ship may demand as much as he chooses per quintal, if the merchant has not agreed with him to pay him at the same rate as for those goods which he has already loaded, and he ought to make it known to him within a certain term that they may agree together.

Chapter xliv. If the managing owner leaves behind goods accepted on freight.

If any managing owner of a ship or vessel, or the ship's clerk for him, has agreed to receive on freight any goods of a merchant by a written contract or with witnesses, and they have shaken hands[2] and an entry has been made in the ship's register, it is incumbent that he take on board the goods which he has agreed to take on freight; and if he cannot take them on board, and he leaves them all on shore, if the merchants shall say to him, that they will remain behind for his account, and the said managing owner of the ship or vessel does not make an arrangement with the merchants before he departs, the goods which he shall leave on shore as above said, or shall have left on shore, ought to remain behind for his account; and the said managing owner of the ship or vessel is bound to give to the said

[1] *place*] In MS. Espagnol 124, a new chapter commences after this word, being chapter xlviii. in the MS.

[2] *shaken hands*] This practice appears to have been general in Europe in the middle ages: cf. Du Cange, Gloss., voc. manu firmâ.

donar als dits mercaders aytanta de roba com sera aquella que ell haura jaquida, o aytants de diners com val o valra semblant roba de aquella en aquell loch on ell fara port per descarregar, o en aquell loch on ell la devia posar. E si la dita roba, que romasa sera, se perdra o s'guastara de tot o en partida, deu esser perduda o guastada al dit senyor de la nau o del leny qui sots la condicio desusdita la haura jaquida. E si per ventura tot co, que lo senyor de la nau o del leny portara en sa nau o en son leny, es a entendre aquella roba o aquella mercaderia que ell portara, se perdra del tot per algun cas de ventura, e aquella que romasa sera, sera salvada, ella deu esser salvada al dit senyor de la nau o del leny, e esser perduda als dits mercaders de qui stada sera. E es rao, que axi com lo senyor de la nau o del leny era tengut de retre al dit mercader o mercaders aytanta de roba com aquella que romasa era, o aytant de diners com semblant roba de aquella valia o valgues en aquell loch on ell la devia portar, e si aquella roba que romasa sera se perdia, devia e deu esser perduda al dit senyor de la nau o del leny, axi es rao que si tota la roba que lo dit senyor de la nau o leny portara se perdra per algun cas de ventura, e aquella, que romasa sera, sera salvada, que deu esser salvada al dit senyor de la nau o del leny e perduda al dit mercader o mercaders. Per qual rao ? Perco, com no seria rao ne egualtat que los senyors de les naus o dels lenys fossen ne deien esser de pijor condicio que l's dits mercaders. E si per ventura la roba que l'senyor de la nau portara en sa nau o en son leny se salvara e aquella que romasa sera se perdra, lo senyor de la nau o leny es tengut de donar axi com desus es dit als mercaders.

merchants an equal quantity of such goods as he has left behind, or as much money as they shall be worth in the place where he shall go into port to land his cargo, or in the place where he ought to have discharged the goods. And if the said goods which shall be left behind, be lost or spoilt in whole or in part, they ought to be lost or spoilt at the cost of the managing owner of the ship or vessel, who has left them on shore under the conditions above mentioned. And if by chance all that the managing owner of the ship or vessel shall carry in his ship or vessel, that is to say the goods or merchandise which he shall carry, are lost altogether by any misadventure, and that which shall be left behind shall be preserved, it ought to be preserved for the said managing owner of the ship or vessel, and be lost to the merchants to whom they belonged. And it is reasonable that, inasmuch as the managing owner of the ship or vessel will be bound to restore to the said merchant or merchants as much of the goods as shall have been left behind, or as much money as goods like them are worth, or would be worth in that place to which he ought to carry them, if those goods which are left behind shall be lost, they ought to be lost to the managing owner of the ship or vessel. It is also reasonable if all the goods, which the said managing owner of the ship or vessel shall convey, shall be lost by some case of misadventure, and those, which shall be left behind, shall be preserved, that they ought to be preserved for the benefit of the managing owner of the ship or vessel, and be lost to the merchant or merchants. For what reason ? Because it would not be reasonable nor equitable that the managing owners of ships or vessels should be in a worse condition than the said merchants. And if by chance the goods which the managing owner of a ship shall carry in his ship or vessel shall be preserved, and that which shall be left behind shall be lost, the managing owner of the ship or vessel is bound to reimburse as above mentioned the

E si la roba que romasa sera se perdra, deu esser perduda al dit senyor de la nau. E si aquella, que en la nau o leny portara, se perdra del tot per algun cas de ventura, e aquella que romasa sera se salvara, ella deu esser del senyor de la nau; e axi lo dit senyor de la nau no es tengut de res a donar als dits mercaders. E si la dita roba, que en la nau portara, se salvara, lo dit senyor de la nau es tengut de donar als dits mercaders tot axi com desus es dit; salvo en aytant que los dits mercaders son tenguts de abatre de aquell preu que lo dit senyor de la nau los dara a los deu donar, totes aytantes averies com elles faeren o hagueren a fer, si lo dit senyor de la nau los hagues portada aquella roba que romasa sera; salvo empero de la vianda que no son tenguts los dits mercaders de abatre, perco com los dits mercaders aytambe fan a fer messio de vianda com si la roba haguessen aportada, e axi no es rao que la vianda se n'abata. E si per ventura la roba que l'dit senyor de la nau portara en sa nau o en son leny no s'perdra de tot, mas en partida, aquella perdua aytal deu esser comptada e abatuda de aquella roba que romasa sera per sou e per livra o per besant, del preu qui lo senyor de la nau es tengut de donar als dits mercaders per la roba que romasa sera. Encara mes, si la nau o lo leny gitara per algun cas de ventura, aquell git deu esser comptat e abatut de aquella roba que sera romasa, per sou e per livra o per besant, del preu desusdit. E si per ventura lo senyor de la nau levara una quantitat de la roba que nolieiada haura, e lexar n'a altra quantitat, si los dits mercaders li

merchants. And if the goods which shall be left behind shall be lost, they ought to be lost to the managing owner of the ship. And if the goods which he shall carry in his ship be totally lost by any case of misadventure, and that which has been left behind should be preserved, it ought to belong to the managing owner of the ship, and so the managing owner of the ship is not bound to give the merchants anything. And if the said goods which he shall carry in his ship shall be preserved, the said managing owner of the ship is bound to give to the said merchants as much as is above mentioned, saving as much as the said merchants are bound to abate from the price which the said managing owner of the ship shall give them or ought to give them, excepting always all the expenses which they would have incurred or would have had to incur, if the said managing owner had conveyed the goods which have been left behind, excepting also the food, which the merchant is not bound to abate, inasmuch as the said merchants have had to incur the same expense for food as if all the goods had been conveyed, and there is no reason why the food should be abated. And if by chance the goods which the said managing owner of a ship shall carry in his ship shall not be totally lost, but only lost in part, that part shall be taken into account and be abated from those goods which have been left behind by shillings and pounds, or by besants, from the price which the managing owner of the ship is bound to give to the merchants for the goods which shall be left behind. Further, if the ship or vessel shall cast goods overboard by some case of misadventure, the jetison ought to be taken into account and be abated from the goods which shall be left behind, by shillings and pounds or by besants from the price abovesaid. And if by chance the managing owner of a ship shall take on board a quantity of goods which he has agreed to receive on freight, and shall leave behind another quantity, if the said merchants shall say to him

diran, axi com desus es dit, lo senyor de la nau es tengut tot en axi com ia es desus dit en aquest capitol metex. Mas empero, si los dits mercaders veuran que la sua roba roman del tot o en partida, e ells no diran ne posaran al dit senyor de la nau la condicio desusdita, ne altre contrast li metran, o per ventura lo senyor de la nau los dira o l's fara dir, que roba roman que es lur: si sobre aco desusdit los dits mercaders res no y diran, ne y contrastaran, ne la condicio desusdita no y posaran, si la dita roba roman e s'pert, deu esser perduda als dits mercaders. Per qual rao ? Perco, com los dits mercaders no digueren ne contrastaren ne posaren com ells vehien que la sua roba romania del tot o en partida al dit senyor de la nau la condicio desusdita: que si ells ho faessen ho u haguessen fet, si la roba que roman se perdia, o s'perdra, no seria ne fora perduda als dits mercaders; ans fora perduda al dit senyor de la nau. Encara mes, que si ells haguessen dita ne posada la condicio desusdita al dit senyor de la nau, lo senyor de la nau la haguera jaquida en recapte, si ell vees o sabes que romangues per sua. Encara mes, per altra rao, car com lo senyor de la nau los dix que roba romania que era lur, e los dits mercaders en res no li contrastaren ne la condicio desusdita no li posaren, appar que es semblant de rao que los dits mercaders no s'preaven si la lur roba romania, com ells al dit senyor de la nau en res ne li contrastaren, ne la condicio desusdita no li posaren; e axi es rao que la roba que romandra, axi com desus es dit, sia que s'perda o no, que sia e deia esser dels dits mercaders. E si per ventura los dits mercaders diran al dit senyor de la nau que ell que nolieig aquella lur roba que romandra a altra nau o a altre leny, e si lo

as above explained, the managing owner of the vessel is bound as is above said in this same chapter. But, nevertheless, if the said merchants have seen that their goods remain behind either in whole or in part, and they have not said nor declared to the managing owner of the ship the abovesaid condition, nor have raised any objection, or by chance the managing owner of the ship has said to them or caused to be said to them that the goods left behind are theirs, if thereupon the said merchants shall say nothing, nor raise any objection, nor declare the abovesaid condition, if the said goods left behind are lost, they are lost to the said merchants. For what reason? Because the said merchants did not say anything, nor raise any objection, nor declare the abovementioned condition to the said managing owner of the ship when they saw their goods left on shore; for if they had done so, in case the goods left on shore had been lost, they would not have been lost to the said merchants, on the contrary they would have been lost to the said managing owner of the ship. Still further, if they had said and declared the said condition to the managing owner of the ship, he would have left them in safe charge, if he saw or knew that they were left behind at his risk. Still further for another reason, for when the managing owner of the ship had said to them that the goods left behind were theirs, and the said merchants had noways objected nor declared the abovesaid condition, it would appear to be conformable to reason that the said merchants did not disapprove of their goods being left on shore, since they made no objection to the managing owner of the ship, nor declared the abovesaid condition to him, and accordingly it is reasonable that the goods left on shore as abovesaid, whether they be lost or not, they should be at the risk of the said merchants. And if by chance the said merchants shall say to the said managing owner of the ship that he should freight the said goods left on shore in another ship or

senyor de la nau la l's hi nolieiara axi com desus es dit, si la dita roba se perdra del tot o en partida, o s'consumara, o pendra algun dan, lo senyor de la nau no l's n'es en res tengut, pus que ab sabuda e ab voluntat dels dits mercaders l'haura nolieiada. Mas empero, si lo dit senyor ne la nau o del leny la nolieiara o la metra en altra nau o leny menys de sabuda e voluntat dels dits mercaders de qui la dita roba sera, si la dita roba se perdra del tot o en partida o pendra algun consumament o algun dan, lo dit senyor de la nau o del leny los es de tot tengut a restituir, perco, car, axi com desus es dit, la haura mesa e nolieiada en altra nau o en altre veixell menys de voluntat e sens sabuda dels dits mercaders. E es rao. Perque? Perco com negu no ha ne deu haver poder en l'altre, sino aytant com aquell o aquells, de qui sera, li n'volen donar o li n'hauran donat. E si per ventura seran alguns mercaders qui hauran nolieiada la sua roba al dit senyor de la nau o del leny, e com lo dit mercader la li haura nolieiada e mostrada la desus dita roba, lo dit mercader dira al dit senyor de la nau o del leny, que lo dit mercader ha anar e per res no pot romandre, e que lo dit senyor de la nau do recapte a aquella sua roba; si lo dit mercader dira, axi com desus es dit, e lo dit senyor de la nau o del leny atorgara; si sobre aco desusdit, lo dit mercader se n'ira ab sabuda e voluntat del dit senyor de la nau o del leny; sobre les raons e condicions desusdites e empreses, lo dit mercader ab lo dit senyor de la nau o del leny; lo dit senyor de la nau li es ten-

another vessel, and if the managing owner of the ship shall freight them as above said, if the said goods are lost either totally or in part, or shall decay or suffer any damage, the managing owner of the ship is not bound to anything, since he will have freighted the goods with the knowledge and consent of the said merchants. But nevertheless, if the said managing owner of the ship or vessel shall freight them or put them on board of another ship or vessel without the knowledge and consent of the merchants to whom the said goods belong, if the said goods are lost totally or in part, or suffer any decay or damage, the said managing owner of the ship or vessel is bound to make full reimbursement, because, as it is above stated, he will have put them on board and freighted them in another ship or in another vessel[1] without the consent and knowledge of the said merchants. And this is reasonable. For what reason? Because no one has or ought to have power over another's property, except so far as the person or persons to whom it belongs is willing to allow it or has allowed it. And if by chance there shall be some merchants who have freighted their goods to the said master of the ship or vessel, and one of the said merchants shall have freighted or shown the said goods, and shall say to the said managing owner of the ship or vessel that he has to go away and cannot remain, and that the said managing owner of the ship shall take charge of the said goods; if the said merchants shall say as above mentioned, and the said managing owner of the ship or vessel shall consent, if thereupon as aforesaid the said merchant shall go away with the knowledge and consent of the said managing owner of the ship or vessel, upon the reasons and conditions abovesaid being agreed to between the said merchant and the said managing owner of the said ship or vessel, the said

[1] *in another vessel*] This is more fully discussed in chapter xlvi.

gut de portar la desusdita roba, qu'ell axi, com desus es dit, haura presa e rebuda en sa comanda, salvant cas de ventura, si se esdevendra, ans que ell la haia carregada o despuis, que lo dit senyor de la nau del cas desusdit no li es tengut. Perque? Perco com negu no reb comanda a son dan. E si per ventura lo dit senyor de la nau o del leny la lexara, es tengut de retre e de donar al dit mercader aytanta de roba com aquella era, o aytants de diners com valguera o valra o valgues semblant roba de aquella en lo dit loch, on lo dit senyor de la nau devia e deu fer port per descarregar, o en aquell loch on la dita roba haura promesa de posar. E axi la roba, que romasa sera, deu esser del senyor de la nau o del leny, vulles que sia perduda o salvada, pus axi com desus es dit, la haura presa e rebuda en sa comanda e en sa guarda; salvo lo cas desusdit, si esdevengut hi sera ans que ell la hagues corregada o despuis. Mas empero, si com algun mercader haura nolieiada, la sua roba a algun senyor de nau o de leny, e com la dita roba haura nolieiada, lo dit mercader se n'ira, sia que se n'vaja ab sabuda del senyor de la nau o no, ab que lo dit senyor[1] de la nau o del leny no la prenga sots sa guarda e sots sa comanda, axi com desus es dit, axi com lo dit senyor de la nau o del leny deura o volra carregar, si lo dit senyor de la nau o leny conexera o trobara la desusdita roba o home per ell, ell la deu fer carregar e metre en la nau. E si ell, ne hom per ell, la dita roba no conexera ne trobara com lo dit senyor de la nau carregara o fara carregar, si la desusdita roba romandra sia que s'perda o no, lo dit senyor de la nau o leny no es tengut de res al dit mercader, qui axi com desus es dit se n'sera anat, de esmena a fer de la

[1] *ab que lo dit senyor*] Reference has been made to this passage in a ote to chapter xii.

managing owner of the ship is bound to convey the said goods which he has taken and received as abovesaid into his charge, saving a case of misadventure, if it should happen before he has put them on board or afterwards, for the said managing owner of the ship or vessel is not responsible in such a case. Wherefore? Because no person undertakes a charge at a loss. And if by chance the said managing owner of the ship or vessel shall leave it behind, he is bound to return and to give to the said merchant as much goods as there were there, or as much money as similar goods were or would be worth in the place where the said managing owner of the ship ought to go into port to land his cargo, or in that place where he promised to land the said goods. And accordingly the goods which shall be left on shore ought to belong to the managing owner of the ship or vessel, whether they be lost or preserved, since as above mentioned he will have taken and received them into his charge and into his protection, saving the case abovesaid, if it should happen before or afterwards. But nevertheless, if when a merchant shall have freighted his goods to any managing owner of a ship or vessel, and after he shall have freighted them the said merchant shall go away, whether he goes away with the knowledge of the managing owner of the ship or not, without the said managing owner of the ship or vessel having taken them under his guard and charge, as abovesaid, whenever the said managing owner of the ship or vessel ought to load or shall load his cargo, if the managing owner of the ship or vessel or his agent shall know or find those goods, he ought to put them on board and load them in his ship. And if neither he nor his agent shall know or find those goods, when the managing owner of the ship is loading his cargo, if the said goods left on shore are lost or not, the said managing owner of the ship is not responsible to the said merchant, who shall have gone away in the manner

dita roba, que axi com desus es dit sera romasa. Salvo empero, que si lo dit mercader, qui se n'sera anat axi com desus es dit, e lo dit mercader jacquira o haura jaquit algu, qui mostre la dita roba al dit senyor de la nau o a hom per ell (vol aytant dir com a scriva), com ell carregara a fara carregar; si aquell qui lo dit mercader hi haura jaquit per demostrar o per delivrar la desusdita roba, e ell la l's mostrara e la l's fara delivrar, com lo dit senyor de la nau carregara o hom per ell: si lo dit senyor de la nau o aquell qui per ell fara carregar, no la levara o no la fara carregar e metre en la nau o leny, si la dita roba romandra, sia que s'perda o no, que lo dit senyor de la nau n'es tengut tot en axi com si lo dit mercader hi fos present; pus que y havia o y haura home en loch del dit mercader, qui la dita roba los delivrara o l's volia delivrar. En aquesta guisa empero, que lo desusdit mercader, o aquell qui per ell sera aqui romas per delivrar la dita roba, puisquen en ver metre. E si lo dit mercader o aquell qui per ell sera aqui romas per delivrar la dita roba, co que desus es dit en ver metre poran, lo dit senyor de la nau es tengut de retre e de donar al dit mercader tot axi com ia es desusdit de les altres condicions desusdites, e en aquella rao metexa. Empero, si lo dit mercader en ver metre no pora, co que desus es dit, ne aquell qui en son loch sera romas per la dita roba a delivrar no la l's mostrara ne la l's delivrara; si sobre aco que desus es dit, la dita roba romandra sia que s'perda o no, lo dit senyor de la nau o del leny no es tengut d'alguna esmena a fer al dit mercader, pusque l'dit mercader la haura jaquida en mal recapte. E es rao que per lo dit mal recapte, que sia e dia esser del

abovesaid, to make any compensation for the said goods, which shall have been so left behind. Saving, however, the case where the said merchant, who shall have so gone away, shall have left behind some one to show the said goods to the said managing owner of the ship or his agent, for instance to the ship's clerk, when he shall load his ship, if the person whom the said merchant has left behind, to show and to deliver the said goods, when the said managing owner or his agent shall load his ship, if the said managing owner of the ship, or the person who is loading it for him, shall not take it on board nor have it loaded and placed on board the ship or vessel, if the said goods are left on shore, whether they be lost or not, the managing owner of the ship is responsible for them just as if the merchant were present, since there was a person in the place of the said merchant, who would have delivered the said goods or have been willing to deliver them. On this understanding, however, that the said merchant or the person who shall be left behind in the place of the said merchant to deliver the said goods, can prove the truth of the facts. And if the said merchant, or the person left behind in his place to deliver the said goods, can prove the truth of the facts above stated, the said managing owner of the ship is bound to return and to give to the said merchant what has been above said, under the conditions above stated, and in the very same manner. Nevertheless, if the said merchant cannot prove what is above said, and the person who has been left in his place to deliver the said goods shall not have shown them nor delivered them, if in accordance with what has been above mentioned the goods are left behind, whether they be lost or not, the said managing owner of the ship or vessel is not bound to make any compensation to the said merchant, since the said merchant has left his goods in bad custody. And it is reasonable on account of the said bad custody that the loss should

dit mercader, pus que ell meteix mal se n'merra; salves empero totes averies e totes coses, a que lo dit senyor de la nau sia tengut, e deia e deu esmenar e restituir als dits mercaders en totes coses e per totes, salvo de la dita vianda. E si per ventura com lo dit mercader se n'sera anat, e lo dit senyor de la nau haura rebuda en sa guarda o en sa comanda la roba del dit mercader, si lo dit senyor de la nau la nolieiara o la metra en altra nau o en altre leny; si la dita roba se perdra del tot o en partida o pendra algun dan, o aquella nau o leny en que ell la haura mesa e nolieiada no sera tantost en aquell loch ou la dita roba se deu descarregar com ell sera ab aquella sua nau o leny, e com la dita nau o leny vendra ab la dita roba no valra ab molt, tant com feya com ell vench ab aquella sua nau o leny; de tot dan que la dita roba prenga, lo dit senyor de la nau o leny es tengut de tot a restituir: perco, car ell haura nolieiada o mesa en altra nau o leny altre menys de manamant de aquell de qui la dita roba sera. Mas empero: si com lo dit mercader se parti del dit senyor de la nau o leny, entre ells fo empres, que si lo dit senyor de la nau o leny portar no la podia, que lo dit senyor de la nau o leny la pogues nolieiar en altra nau o leny, e si entre ells aytals convinences com desus es dit empreses seran: si lo dit senyor de la nau o del leny la nolieiara sots la condicio desusdita, perdes 'la roba o no, o prenga dan o no, o venga aquella nau o aquell leny en que ell la haura nolieiada o no, o venga tart o juas,[1] que lo dit senyor de la nau o leny no es tengut de nenguna esmena a fer al dit mercader, pus qu'ell ho empres ab lo dit mercader com d'ell se parti,

[1] *tart o juas*] Esp. 124 has this reading, which M. Pardessus has adopted in preference to "tart o "mas," which is the reading of the editions of 1494 and 1502, and which Capmany follows, although Capmany has translated it in a sense, which agrees with the reading of the MS.

be that of the merchant, since he himself has well deserved it, excepting always all the outgoings and other expenses, which the managing owner is bound and ought to compensate and repay to the said merchants in all matters and things excepting the said provisions. And if by chance when the said merchant has gone away, and the said managing owner of the ship has received under his guard and charge the goods of the merchant, if the said managing owner of the ship shall freight it and place it on board of another ship or another vessel, if the said goods shall be lost in whole or in part or take any harm, or that ship or vessel in which he has freighted and placed the goods shall not arrive so soon at the place where the said goods ought to be discharged as he shall arrive there with his ship or vessel, and when the said ship or vessel shall come with the said goods they shall not be worth so much as they would have made when he came with his ship or vessel, the said managing owner of the ship or vessel is bound to make good in its entirety all the damage which the said goods shall receive, because he has freighted and loaded them in another ship or vessel without the authority of him to whom the said goods belong. But nevertheless, if, when the said merchant parted from the said managing owner of the ship or vessel, it was agreed between them, that if the said managing owner of the ship or vessel could not carry the goods, the said managing owner of the ship or vessel might freight them in another ship or vessel, and if between them such agreements as above mentioned have been made, if the said managing owner of the ship or vessel shall freight them under the condition abovesaid, whether they are lost or not, or incur damage or not, or he has freighted them or not, or whether they come late or early, the said managing owner of the ship or vessel is not bound to make any compensation to the merchant, because he has arranged with the merchant when he

que si ell portar ne la podia, que la li nolieias a altra nau o altre leny, si donchs lo dit senyor de la nau no la havia jaquida, que vol aytant dir que fos romasa en aquell loch, on lo dit senyor de la nau carrega. E si lo dit senyor de la nau la nolieiara a altra nau o a altre leny; si aquell senyor de la nau o de aquell leny a qui aquell altre senyor de aquella nau o de aquell leny qui la dita roba li haura nolieiada, si la jaquira (vol aytant dir que si la dita roba romandra en aquell loch on ell carregara) ell es tengut de esmena a fer al dit mercader, de qui la dita roba sera, tot en axi com fora o era aquell senyor de aquella nau a qui lo dit mercader la havia nolieiada, si levar no la li pogues: e en totes aquelles condicions es obligat que lo primer era, a qui ell la havia nolieiada, salves empero totes convinences e empreniments del senyor de la nau o del leny ab los dits mercaders fetes e empreses per algunes raons en totes coses e per totes. E per les raons desusdites fon fet aquest capitol.[1]

Capitol xlv. De patro qui lexera roba nolieiada.

Lo senyor[2] de la nau o del leny qui nolieiara roba ab carta o ab testimonis, o que sia scrita en capbreu, o que sia donada palmada entre ells, lo senyor del leny es tengut de portar aquella roba. E si la roba roman, que l'senyor del leny no la leu, o no la pusca levar, ell es tengut de donar e de retre al mercader la sua roba, la qual li haura nolieiada, o aytants diners com valra la, on lo leny fara port per descarregar; si donchs lo senyor del leny no se n'ave o no se n'era avengut ab

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[1] *capitol*] This concluding sentence is omitted in Capmany's text.

[2] *Lo senyor*] Esp. 124, chapter l. here commences with the Rubric "Capitol de nau ho de leyn qui "sera noliejat ab carta o ab testi- "monis."

departed, that if he could not carry them he would freight them in another ship, unless indeed the managing owner of the ship has left them on shore, in other words they have been left behind at the place where the managing owner of the ship has taken his cargo on board. And if the said managing owner of the ship shall freight them in another ship or in another vessel, if the managing owner of that other ship or of that other vessel, by which the managing owner of the ship has freighted the said goods, shall leave them on shore, in other words if the said goods are left behind in the same place where he has taken his cargo on board, he is bound to make compensation to the merchant to whom the said goods belong, precisely in the same manner as the managing owner of the ship to whom the said merchant had freighted his goods, if he could not take them on board, and he is responsible under the same conditions as the first was, to whom the merchant had freighted his goods, saving always all the agreements and undertakings of the managing owner of the ship or vessel made and entered into with the said merchants for any reasons whatever in any matters. And for the reasons abovesaid this chapter was made.

Chapter xlv. Of the managing owner who shall leave behind goods accepted on freight.

If the managing owner of the ship or vessel has accepted goods on freight with a writing or with witnesses, or which shall be entered in the manifest, or respecting which an agreement shall have been concluded by shaking of hands, he is bound to convey the goods. And if the goods remain behind because the managing owner of the ship has not taken them on board or could not take them on board, he is bound to give up and restore to the merchant his goods which he has accepted on freight, or as much money as they are worth at the place where the ship shall make her port of discharge, unless the managing owner of the vessel shall have arranged or it shall have been arranged

los mercaders abans que l'leny partesca d'aquell loch on la roba haura nolieiada. E si la roba roman e s'pert, que l'senyor del leny no se n'sia avengut ab lo mercader, deu esser perduda al senyor del leny; e lo senyor del leny es tengut de donar al mercader axi com desus es dit. E fon fet perco aquest capitol, car molts senyors de lenys al comencament que leven viatge fan gran mercat del nolit, e com lo viatge es levat, troven roba de que hom los dona gran nolit: e si aquesta condicio no y era, la roba romandria de que haurien poch nolit, e portarien aquella de que haurien gran nolit.

Capitol xlvi. De roba nolieiada per cert loch e si pendra dan.

Senyor[1] de nau o de leny, que sia en algun loch e nolieiada roba de mercaders per portar en altre loch, lo qual loch sera ia empres entre lo senyor de la nau e los dits mercaders, mester es que l'dit senyor de la nau la port la on aura empres o promes als mercaders ab aquella sua nau. E si lo senyor de la nau la metra en altra nau o leny, menys de voluntat e sabuda dels mercaders (si aquella nau o leny on ell la metra sia major o millor que l'seu leny no sera) si aquella roba se perdra o s'gastera, o aquell de qui la roba sera ne sostendra algun dan o haura a fer messio, lo senyor de la nau es tengut de esmenar aquella roba que perduda

[1] *Senyor*] Esp. 124, chapter li. commences here with the Rubric "Nau o leyn que sia in algun loch, " e lo senyor noliejara roba de " mercaders."

with the merchants, before the vessel departed from the place where the goods have been freighted. And if the goods remain behind and are lost, whilst the managing owner of the vessel has made no arrangement with the merchant, they ought to be lost to the managing owner of the vessel, and the managing owner of the vessel is bound to restore them to the merchant as abovesaid. And this chapter was made because many owners of vessels at the commencement, when they undertake a voyage, offer their vessels to freight at a low rate, and after the voyage has been undertaken find goods for which a person is willing to pay a high rate of freight; and if this condition[1] were not maintained, they would leave behind the goods which they had accepted at a low rate of freight, and convey the goods for which they can have a high rate of freight.

Chapter xlvi. Of goods freighted to a certain place, and if they suffer damage.

If a managing owner of a ship or vessel shall be in any place, and shall accept on freight goods of merchants to carry to another place, which place shall have been agreed upon between the said managing owner and the merchants, he is under the necessity of conveying the goods to the place, to which he has agreed with and promised to the merchants to carry them, in his own ship. And if the managing owner of the ship shall put them on board of another ship or vessel without the consent and knowledge of the merchants, although that ship or vessel may be larger or better than his own,[2] if the goods shall be lost or shall be spoilt, or he to whom the goods belong shall sustain any loss or incur any expense, the managing owner of the ship is bound to make compensation for the goods which shall be lost,

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[1] *this condition*] This subject is further discussed in chapter ccxx.

[2] *larger and better than his own*] This rule is more severe than that of the Roman law, which forbad goods to be transhipped into an inferior vessel. Dig. xiv. t. 11, fr. 10, § 1. De lege rhodia de jactu.

sera e tot lo dan et tot lo interes que aquell, de qui la roba es, haura pres; e sia cregut per son sagrament. Mas empero, si lo senyor de la nau fa a saber als mercaders que no volra anar en aquell loch, en lo qual ell havia promes als mercaders de portar la lur roba, e ell los diu que la vol metre en aytal nau o en aytal leny, si los mercaders lo y atorguen, lo senyor de la nau la y pot ben metre. Mas, si los mercaders no u atorguen, ell no la y deu metre, e si la y met, es ne tengut axi com desus es dit. Mas, si los mercaders lo y atorgan, e la roba se perdra o s'guastera, lo senyor de la nau no l's es tengut de alguna esmena a fer, pus que ab voluntat e ab sabuda dels mercaders ho haura fet o de la major partida.

Capitol xlvii. De exarcia, de mariners e notxer, e de fer posar l'aver.

Lo senyor[1] de la nau es tengut als mercaders de haver la exarcia, que ell haura dada e mostrada per scrit, o tot en axi com ha haura dit en oida del notxer que haura, e dels mariners; e no n'pot gitar notxer ne mariners sino ab voluntat dels mercaders, fins a cap del viatge, ne vendre ne dar exarcia ne res que pertanga a la nau. E lo senyor de la nau es tengut de fer posar l'aver als seus mariners.

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[1] *Lo senyor*] Esp. 124, chapter lii. here commences with the Rubric "De exarcia ametra en nau ho en leyn."

and for all the loss and all the interest which he to whom the goods belong may have incurred, and he shall be believed on his oath. But nevertheless if the managing owner of the ship makes it known to the merchants that he is not willing to go to the place to which he has promised to carry their goods, and he tells them that he wishes to put their goods on board such a ship or such a vessel, if the merchants agree to it, the managing owner of the ship may well put them on board. But if the merchants do not agree to it, he ought not to put them on board, and if he does put them on board he is responsible in the manner aforesaid. But if the merchants agree and the goods are lost or are spoilt, the managing owner of the ship is not bound to make any compensation, because he will have done it with the consent and the knowledge of the merchants, or of the greater part of them.

Chapter xlvii. Of the ship's apparel, of the mariners and the mate, and of the landing of the goods.

The managing owner of the ship is bound to the merchants to have the ship's apparel[1] which he has shown and announced in writing, or such precisely as he has described it in the presence of the mate and of the mariners; and he cannot dismiss the mate nor the mariners without the consent of the merchants, until the end of the voyage, nor sell nor give away any part of the ship's apparel, nor anything appurtenant to the ship. And the managing owner is bound to land the goods with the help of his mariners.[2]

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[1] *the apparel*] How the ship's apparel is to be made good, if damaged or destroyed on the voyage, is explained in chapters cxliii., cxlv., and clxxxii.

[2] *mariners*] This provision conflicts in some respects with chapters xxviii. and xxix. The word "posar" is used in the sense of "to land" in chapter xliv. p. 130.

Capitol xlviii. De conservatge.

Senyor[1] de nau deu fer conservatge ab leny poch o ab gran, si los mercaders de la nau ho volen. Encara,[2] son tenguts los mercaders, si lo senyor de la nau vol fer conservatge ab nau o ab leny, gran o poch, e u fara ab counsell del notxer e dels panesos e de tots los mariners, ell ho pot fer, e los mercaders deven ho atorgar; e per aytal rao, co es a saber per por de mals lenys, no u deven contrastar ne poden, si donchs dan lur no y conexeran, o de la nau o del leny.

Capitol xlix. De dar cap a altra nau.

Si alguna[3] nau o leny sera en algun loch, e haura o deu haver viatge per anar en algun altre loch, si aqui haura algun leny menor o maior d'ell o semblant d'ell, que haura anar en aquell meteix viatge e per dubte que ell haura de sos enemichs o de mals lenys, ell ne gosara anar per si en lo dit viatge, e lo senyor d'aquell leny que lo dit dubte haura, dira a quell senyor de la nau o de aquell leny, e si li tendra cap; si lo dit senyor de la nau o leny lo y atorgera o lo y prometra, ell li es tengut que lo y attenga, si donchs fortuna de mal temps no lo y tolra. E si los dits lenys del loch, on la convinenca o la promissio sera stada feta, partiran ensemps, e lo dit senyor de la nau, qui haura promes de tenir cap al dit senyor del leny qui haura lo dit reguart o dubte, no l'li volra tenir ne l'li tendra, si lo dit senyor de aquell leny, qui lo dit dubte

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[1] *Senyor*] Esp. 124, chapter liii. here commences with the Rubric "Capitol de conservatge."

[2] *Encara*] Esp. 124. Another chapter (liv.) here commences with a similar Rubric.

[3] *Si alguna*] Esp. 124, chapter lv. here commences with the Rubric "Senyor de nau es tengut de "dar cap a altra nau o leyn."

Chapter xlviii. Of convoy.

A managing owner of a ship ought to go in convoy[1] with a few or many vessels, if the merchants on board the ship wish it. In addition the merchants are bound, if the managing owner wishes, to go in convoy with other vessels, many or few, and if he has held counsel with the mate and with the officers of the poop and with all the mariners, he has the power to do so, and the merchants ought to agree to it, and for such a reason, that is to say, for fear of piratical cruizers, they ought not and have not the power to object to it, unless they perceive that damage will result therefrom either to themselves or to the ship or vessel.

Chapter xlix. Of giving a tow rope to another vessel.

If any ship or vessel shall be in any place, and shall have or ought to have to make a voyage to another place, if there shall be there another vessel larger or smaller than her or similar to her, which will have to go on that same voyage, and for fear which she has of enemies or pirates she shall not dare to go by herself on the said voyage, and the managing owner of the vessel which has fear shall speak to the managing owner of the other ship or vessel and ask him to give him a tow rope, if the said managing owner of the ship or vessel shall assent and promise it to him, he is bound to perform his promise, unless the accident of bad weather prevents him. And if the said vessels shall set out together from the place where the consent and promise shall have been given, and the said managing owner of the vessel, which has promised to give a tow rope to the vessel which has the said dread and fear, shall not be willing to give a tow rope to it, and shall not give it, if the said managing owner of the vessel, which shall have

[1] *convoy*] Regulations as to vessels sailing in convoy are to be found in the Statutes of Marseilles, l. iv. c. xxiii. and in the Ordinance of king Jame I. of Aragon of 1258, ch. iv. In the former they are described as "facientes conservagium," in the latter, as "facientes conservaticum."

e reguart haura o havia, pendra algun dan, ans que sia junt en aquell loch tret en lo qual lo dit senyor de la nau li haura promes de tenir cap, per males gents e per sos enemichs, aquell senyor de aquella nau qui la dita promissio li haura feta, li es tengut de tot lo dit dan a restituir, sens tot contrast. Per qual rao? Perco, que si el dit senyor de la nau no li hagues feta la dita convinenca o promissio, lo dit senyor del leny, qui lo dit dubte o reguart havia e ha, no fora partit del dit loch, sino fos per fe de la dita convinenca e promissio, que lo dit senyor de la nau li haura feta. E si lo dit leny se n'partis, que lo dit senyor de la nau no li hagues promes tenir cap; si lo dit leny hagues pres algun dan, lo dit senyor de la nau no li n'es ne li n'fora de res tengut de restituir. E si per ventura lo dit senyor de la nau, qui la dita convinenca o promissio haura feta, tendra lo dit cap al dit leny segons que desus havia promes, e males gents o enemichs lurs o fortuna de temps forcivolement lo li tolran, lo dit senyor de la nau qui la dita promissio o convinenca haura feta, e en ell no sera romas que no la haia attesa, ell, ne la nau, ne res que en la nau sia no es tengut de restituir, pus en culpa d'ell no sera romas, co que promes haura, pus attendre no poch per les raons desusdites. Empero, si lo dit senyor de la nau qui haura promes de tenir cap a algun leny, si ell ne prendra o n'haura pres loguer o servey, si lo dit leny del qual ell loguer o servey haura pres, se perdra del tot o en partida, lo dit senyor de la nau es tengut de restituir tot lo dan que aquell leny de que ell haura pres loguer o servey haura sostengut o pres, e la roba, que en la dita nau sera, per sou e per livra o per besant. Si

or had that fear and dread, suffers any damage before she has arrived at that place, to which the said managing owner of the other vessel had promised to tow her, from corsairs or from enemies, the managing owner of the vessel, which has made the abovesaid promise, is bound to make good all the said damage without any dispute. For what reason? Because if the said managing owner of the vessel had not made the said agreement or promise, the managing owner of the said vessel, which had that fear and dread, would not have set out from the said place except on the faith of the said agreement and promise, which the managing owner of the other vessel had made to him. But if the said vessel has set out, without the managing owner of the other vessel having promised to tow her, if the said vessel incurs any damage, the managing owner of the other vessel is not and will not be bound to make any restitution. And if by chance the said managing owner of the vessel, who has made this agreement and promise, shall give a towrope as aforesaid to the said vessel according to what he has promised, if pirates or enemies or the fortune of the weather separate them by force, the said managing owner of the vessel, who has made the said promise and agreement, and by whom nothing has been omitted to accomplish it, is not bound to restore the ship, nor anything in the ship, since nothing has been omitted by his fault which he has promised, and since he could not accomplish it for the reasons above stated. However, if the said managing owner of the ship, who has promised to tow another vessel, shall take or have taken any hire or recompense, and if the vessel, from which he has taken hire or recompense, shall be lost totally or in part, the said managing owner of the ship is bound to restore all the loss which that vessel, from which he has taken hire or recompense, shall have sustained or received, and the goods, which shall be on board that vessel, by shillings and pounds

donchs lo dit senyor de la nau, qui lo dit loguer o servey haura pres, no empendra o no haura empres despuys o abans o com lo dit loguer o servey pres del dit senyor del leny, qui lo dit dubte o reguart havia, que si algun cas de ventura se esdevendra, que ell ne la nau, ne res que en la nau sia, no sia de res tengut a restituir. Lo cas de ventura es a entendre que ell hagues a jaquir lo dit cap al dit leny per fortuna de mal temps, o per forca de mals lenys, o per forca de lurs enemichs, o per forca de males gens. E si lo dit senyor de la nau que lo dit loguer o servey haura pres, dira o haura empres segons que desus es dit, ab lo dit senyor del leny qui lo dit dubte o reguart havia, lo senyor de la nau ne l'cos,[1] ne res que en la nau sia, no son tenguts de restituir per les raons desusdites; e pus que ab lo dit senyor del leny, qui lo dit loguer o[2] servey li dona o li havia donat o li es tengut de donar o haura empres, com lo dit loguer o servey pres, o despuys, o dabans. Empero, tot senyor de nau o de leny se guart e s'deu guardar, quina convinenca o promissio fara ab algu o ab alguns, sia que ell dit senyor de la nau ne prenga loguer o servey o no: que si lo dit senyor de la nau fara la dita convinenca o promissio, sens sabuda e voluntat dels mercaders, qui en la nau seran, o roba hi metran, o y hauran mesa; si cas algu s'y esdesvendra, los dits mercaders no son de res tenguts. Ans, si los dits mercaders dan o greuge o destrich ne sostendran algu per la dita convinenca o promissio que l'dit senyor de la nau haura feta, o fara

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[1] *ne l'cos*] nel cors della nau. Espagnol 124.

[2] *loguer o*] These words are omitted in Espagnol 124, which inserts the words "ho loguat" after dona.

or by besants; unless the said managing owner of the ship, which has taken the said hire or recompense from the managing owner of the vessel, which had the said fear and dread, shall agree or have agreed after or before or when he took the said hire and recompense from the said managing owner of the vessel, who had the said fear and dread, that if a case of misfortune should happen, he should not be bound to make good the ship itself or anything in the ship. The case of misfortune contemplated is where he has to cast off the towrope of the said vessel from the accident of bad weather, or from the violence of corsairs, or from the violence of enemies, or from the violence of pirates. And if the said managing owner of the ship, who has taken the said hire or recompense, shall have agreed, according to what has been said above, with the managing owner of the vessel, who had the said fear and dread, the managing owner of the ship is not bound to make good the hull of the ship nor anything which was in the ship, for the abovesaid reasons, and because he had agreed with the said managing owner of the vessel, who gave him, or had given him, or was bound to give him the said wages or recompense, when he took the said wages or recompense, or after or before he took it. Nevertheless every managing owner of a ship or vessel should take care and ought to take care what agreement or promise he shall make with any person or persons, whether the said managing owner of the ship takes hire or recompense or not; for if the said managing owner of a ship shall make the said agreement or promise without the knowledge and assent of the merchants, who shall be on board the ship or shall intend to put or shall have put goods on board, if any accident supervenes the merchants are not responsible for anything. On the contrary, if the said merchants sustain any damage or harm or prejudice by the said agreement or promise, which the managing owner of the ship shall

ab algu or ab alguns sens sabuda e voluntat dels dits mercaders, lo dit senyor de la nau lo es tengut del tot a restituir, si la nau ne sabia esser venuda e encara los biens del dit senyor de la nau, si trobans seran. E per la rao desusdita fon fet aquest capitol.

Capitol l. De cas de git.

Encara[1] lo senyor de la nau es tengut que no git ne faca gitar, en tro que l'mercader haia gitada alguna cosa; e puys, pot fer gitar fins a salvament. En aquell punt pot la convinenca scrivre l'escriva axi be, com si era en terra: e lo senyor y deu metre per aytant com val la meytat de la nau.

Capitol li. De roba gitada.

Tota roba,[2] que sera gitada de nau o de leny, per mal temps o per por de lenys armats, sia comptada per sou e per livra o per besant, de tota la roba: e la nau o lo leny deia pagar en aquell git per la meytat d'aco que valra.

Capitol lii. Com se deu comptar roba gitada.

La nau[3] o leny que gitara roba, axi com damunt se conte, deu esser comptat axi; co es, que si gita ans que sia a mija via d'ella on ha anar, deu esser comptada

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[1] *Encara*] Esp. 124, chapter lvi. commences here with the Rubric "Capitol de git"

[2] *Tota roba*] Esp. 124, chapter lvii. commences here with a similar Rubric.

[3] *La nau*] Esp. 124, chapter lviii. here commences with the Rubric "De nau ho leyn qui gitara roba."

have made, or shall make with any person or persons without the knowledge and assent of the said merchants, the said managing owner of the ship is bound to make full restitution, even if the ship shall have to be sold, and likewise the property of the said managing owner of the said ship, if any shall be found. And for the reasons above said this chapter was made.

Chapter l. In case of jetison.

Likewise the managing owner of a ship is bound not to commence nor cause to be commenced any jetison,[1] until the merchant[2] has cast overboard something, and after that he may cast overboard until he saves the vessel. Upon this emergency the ship's clerk[3] may write out any agreement precisely as if he was on shore, and the managing owner of the ship ought to contribute as much as the moiety of the ship is worth.

Chapter li. Of goods cast overboard.

All the goods which shall be cast overboard from a ship or vessel from bad weather, or from fear of armed vessels, shall be counted in shillings and pounds or in besants against the entire cargo, and the ship or vessel ought to pay in estimating the jetison half of its value.[4]

Chapter lii. How goods cast overboard ought to be valued.

The ship or vessel which shall cast goods overboard, as above explained, ought to be valued in this manner: if the jetison has taken place before she is half way

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[1] *jetison*] This subject is more fully discussed in chapters li., lii., liii., liv., lxvi., lxvii., lxxxvi., lxxxvii., cxlii., cxlvii., ccxii., ccxxxix, ccl., ccli.

[2] *the merchant*] The formalities to be observed in cases of jetison are further explained in chapter liv.

[3] *ship's clerk*] This is a case of exception to the rule laid down in chapter xv.

[4] *half of its value*] The Roman Law laid down the rule of contribution on the part of the ship in these terms, "dominum navis pro "portione obligatum esse." Dig. l. xiv. tit. 11, fr. 11, § 2. The strict rule of "one half" on the part of the ship is adopted in the ancient Custom of Valencia of A.D. 1250, lib. ix., Rubr. xvii. § vii.; in the Statute of Marseilles, l. iv. ch. xxx.; and in the Maritime Ordinance of Peter of Aragon of A.D 1340, art. xxix.

axi com costava alla de on parti la nau o leny. E si ha passada mija via, deu esser comptada axi com valra alla on la nau o leny fara port, la dita mercaderia gitada a aquella que romandra.

Capitol liii. Com deu esser pagada roba gitada.

Si algun[1] senyor de nau o de leny haura carregada la sua nau o lo seu leny de roba de mercaders per anar descarregar en altre loch, lo qual loch sera ja empres entre lo senyor de la nau o del leny e los mercaders, e anant en aquell viatge vendrali cas de ventura, que per mal temps, o per lenys armats de enemichs, o per qualque altra ventura ell haura a gitar de aquella roba que porta una quantitat; quant lo senyor de la nau o del leny sera alla on devia descarregar junt ab la nau o ab lo leny, e ab aquella roba que restaurada sera, lo senyor de la nau o del leny deu fer en axi: que ans que ell livre gens de aquella roba que restaurada sera a aquells mercaders, qui la deven rebre o de qui sera, ell deu e pot retenirse tanta de aquella roba que restaurada sera e ell haura portada ab la sua nau o ab lo seu leny, de quascun mercader, que li sia ben bastant e qui li bast a aquell git qui fet sera e encara a molt mes, perco que al senyor de la nau o del leny ne als mercaders de qui sera aquella roba, que sera gitada, no pagues tornar a dan ni a perdua ni a greuge;

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[1] *Si algun*] Esp. 124, chapter lix. here commences with the Rubric "Nau o leyn, qui aura a gitar per " mal temps o per anamichs."

from her port of departure, the goods ought to be valued at what they have cost at her port of departure; and if she has passed the half way, the goods cast overboard with those that remain shall be estimated at what they would be worth at her port of arrival.[1]

Chapter liii. How payment should be made for goods cast overboard.

If any managing owner of a ship or vessel shall have loaded his ship or vessel with the goods of merchants to go and discharge them in another place, which place shall have previously been agreed upon between the managing owner of the ship or vessel and the merchants, and during the voyage a case of misfortune befalls her, that from bad weather or from meeting with armed ships of enemies or from some other misfortune she has to cast overboard a quantity of the goods which she is carrying, when the managing owner of the ship or vessel shall have arrived with the ship or vessel and the goods which remain at the port where she ought to discharge, the managing owner of the ship or vessel ought to act in this manner, before he delivers any part of the goods which remain to those merchants who ought to receive them and to whom they belong; he ought and may retain[2] so much of the goods which remain and which he has brought with his ship or vessel from each merchant, as will be well sufficient and will suffice for that jetison which has been made and for much more, in order that no damage or loss or prejudice should accrue to the managing owner of the ship nor to those merchants to whom the goods belonged which were thrown overboard, for each has lost enough already.

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[1] *port of arrival*] This singular mode of valuation, according to the extent of the voyage accomplished at the time of the jetison, is adopted in the Customs of Amsterdam, Enchuysen, and Stavern, articles 33 and 34, which are printed by M. Pardessus in his collection of Lois Maritimes, tom. i., p. 417.

[2] *retain*] This principle was sanctioned by the Lex Rhodia de Jactu, Dig. l. xiv., t. 11, fr. 2. prœm., and by the Rolls of Oleron, art. ix.

perco car assats hi pert quascu. Encara mes, perco que ells no haguessen anar derrere aquels mercaders, ne a pregar de qui aquella roba seria que sera restaurada. E aquell git deu esser comptat segons que s'gitara, e lo senyor de la nau o del leny es hi tengut de metre per la meytat, co es, perco que valra la meytat de la nau o del leny. Encara mes, si lo senyor de la nau o del leny demana tot lo nolit, axi be de la roba gitada com de aquella que sera restaurada, devli esser pagat, axi be com si tota la roba era salvada; e l'senyor de la nau o del leny es tengut de metre en aquell git, qui fet sera, per tot aquell nolit que rebra, per sou e per livra, axi com fara aquell haver qui sera restaurat. Per qual rao? Perco, car lo senyor de la nau o del leny haura axi be pres nolit de aquella roba, que sera gitada, com de aquella que sera salvada. E es rao, pus que ell vol nolit axi be de la roba gitada, com de la salvada, que ell la ajut a esmenar: e per la rao desusdita deu hi pagar tot lo nolit en lo git. Empero, si lo senyor de la nau o del leny no demanara nolit ne l'pendra, sino solament de la roba que restaurada sera; de aquell nolit aytal lo senyor de la nau o del leny no es tengut de metre part al git: que assats hi pert, pus pert tot lo nolit d'aquella roba que sera gitada.

Capitol liv. La serimcnia que s'deu fer en cas de git.

Nau[1] o leny que correra o sostendra fortuna de mal temps, si lo senyor de la nau o del leny veu o coneix que ells son a ventura e a condicio de perdres', si ells no gitan; lo senyor de la nau deu dir e manifestar a

[1] *Nau*] Esp. 124, chapter lx. here commences with the Rubric "Nau " o leyn qui sostendra o corrara fortuna [e vol fer git]. The four last words are in a modern hand and in black ink.

Still further, in order that they should not have to follow and to beg of the said merchants to whom the said goods belong which remain. And the jetison ought to be estimated according to what has been cast overboard, and the managing owner of the ship or vessel is bound to contribute for a moiety, that is for a moiety of the value of the ship or vessel. Still further, if the managing owner of the ship or vessel demands the whole freight of the goods cast overboard equally as of the goods preserved, he ought to be paid equally as if the whole of the goods had been preserved, and he is bound to contribute to the jetison which has taken place for all the freight[1] which he shall receive by shillings and pounds, just as the other goods which have been preserved shall do. For what reason? Because the managing owner of the ship or vessel will have received freight as well for the goods which have been cast overboard as for those which shall be preserved. And it is reasonable when he claims freight for the goods cast overboard equally as for those which have been preserved, that he should help to compensate, and for the reason above said all the freight ought to pay towards the jetison. Nevertheless if the managing owner of the ship or vessel does not claim nor receive freight except for the goods which shall be saved, of such freight the managing owner is not bound to contribute any part to the jetison, for he has lost enough, inasmuch as he has lost the freight of that which has been cast overboard.

Chapter liv. The solemnities to be observed in case of jetison.

In the case of a ship or vessel which shall incur or sustain the misfortune of bad weather, if the managing owner of the ship or of the vessel sees and knows that she is in risk and danger of being lost, unless the goods are cast overboard, the managing owner of the ship

[1] *for all the freight*] This subject is more fully discussed in chapters cli., ccxxxix. and ccli. A different principle was approved in the Rolls of Oleron, art. viii.

tots los mercaders en oida del notxer e de tots aquells qui en la nau seran; "Senyors mercaders, si nos no n's " alleviam, som a gran ventura e a gran condicio de " perdre les persones e lo haver et tot quant aci ha: e " si vos altres, senyors mercaders, voleu que alleviasem, " ab la voluntat de Deu, porem estorere les persones e " gran partida del haver, e si nos no n'gitam, serem a " ventura e ab condicio de perdre a nos meteixos e a " tot lo haver." E si los mercaders se acorden del gitar, tots o la major partida; la donchs ells poden gitar. Mas lo un dels mercaders, si tots no poden, deu comencar a gitar, e pus que l'mercader o mercaders hauran gitada qualque cosa, despuys pot gitar lo senyor de la nau tro a fins a salvament. En aquell cas, o en aquella sao pot l'escriva la convinenca scrivre axi be com si la nau tenia proys en terra. E si l'escriva no u podia scrivre, los mariners poden fer testimoni de totes convinences e empressions que sien fetes entre lo senyor de la nau e los mercaders, pus que l'escriva no ho haura pogut scrivre en lo cartolari; perco que frau negu no pusca haver entre lo senyor de la nau e los mercaders, de les convinences e empreniments que entre ells seran fetes. E si per ventura en la nau no haura

ought to say and to declare to all the merchants in the presence of the mate and of all those who shall be in the ship, "Gentlemen merchants, if we do not lighten "the vessel we are in great risk and in great danger "of losing the lives and the goods and all that is on "board; and if you others, gentlemen merchants, are "willing that we should lighten the vessel, with the "will of God we may be able to extricate the lives "and the greater part of the goods; and if we do not "cast overboard, we shall be at the chance and risk of "losing ourselves and all our property." And if the merchants agree [1] to cast overboard all or the greater part, they may thereupon cast overboard; but one of the merchants, if all cannot, ought to begin to cast overboard, and when the merchant or the merchants have cast something overboard, the managing owner of the ship may then cast overboard and cause to be cast overboard goods until they are saved. In this case and in these circumstances the ship's clerk may write an agreement equally, as if the ship was moored to the land. And if the ship's clerk cannot write it, the mariners may bear witness to all the agreements and arrangements which may be made between the managing owner of the ship and the merchants, since the ship's clerk cannot write them in the ship's register, in order that no fraud may take place between the managing owner of the ship and the merchants concerning the agreements and arrangements which may be made between them. And if by chance in the ship there be no mer-

[1] *if the merchants agree*] Article viii. of the Rolls of Oleron goes further, and authorises the master of the ship to cast overboard in case of necessity, without the consent of the merchants. The practice of a merchant commencing the jetison was sanctioned by the Custom of Valencia of A.D. 1250, in the case where the merchants agreed to the jetison, but the Custom laid down no rule where they did not agree. lib. ix., rubr. xvii., § vii.

mercaders, en aquell cas e en aquella sao lo senyor de la nau deu e pot esser mercader; e aco que ell fara deu ho fer ab consell del notxer e dels personers e de tot lo cominal de la nau. E si ell ho fa ab consell de tots aquells que desus son dits, e lo dit senyor de la nau fara gitar, deu esser axi tengut per ferm, com si tots los mercaders hi eren, o en axi com si tota la roba era del senyor de la nau. E lo senyor de la nau es axi tengut de metre en aquell git, per co que valra la meytat de la nau, e los mercaders, de qui la roba sera, no y deven contrastar en aquell git, si per aytal rao com desus es dit sera fet. E aquell git deuse pagar per sou e per livra o per besant, segons que la roba sera gitada. E fon fet perco aquest capitol, que lo senyor de la nau o del leny pot esser mercader en aquell cas e en aquella sao, si mercaders no y ha: que si el senyor de la nau no havia poder en aquell cas de esser mercader, les demes vegades se perdrien les persones e la nau e tot lo haver; e perço deu e pot esser lo senyor de la nau mercader en aquell cas e en aquella sao, si mercader no y ha; e val mes que s'git una quantitat de la roba, que si s'perdien les persones, e la nau, e tot lo haver.

Capitol lv. De manifestar roba al scriva.

Encara,[1] deven los mercaders manifestar al scriva, com la nau haura feta vela, si res hi han mes que no sia scrit. E si s'trova res que ells no haguessen mani-

[1] *Encara*] Esp. 124, chapter lxi. here commences with the Rubric "De "manifestar roba al scriva."

chants,[1] in that case and under those circumstances the managing owner of the ship ought to be and may be a merchant, and what he shall do he shall do with the advice of the ship's mate and of the part-owners and of all the crew of the vessel, and if the managing owner of the ship shall act upon the advice of all the above-mentioned persons, and shall cast goods overboard, it shall be as valid as if all the merchants were there, or as if all the goods belonged to the managing owner of the ship. And the managing owner of the ship is also bound to contribute to the jetison half the value of the ship, and the merchants, to whom the goods belong, ought not to object to the jetison, if it has been made for the reasons above mentioned. And the jetison shall be paid by shillings and pounds or by besants, according to what has been cast overboard. And this chapter was made, that the managing owner of the ship or of the vessel may act as a merchant in the case and under the circumstances that there is no merchant, for if in that case the managing owner of the ship had not power to act as a merchant, the lives and the ship and the goods would on many occasions be lost, and for this reason the managing owner of a ship may act as a merchant in the case and under the circumstances that there are no merchants: and it is far better that a quantity of goods should be cast overboard than that the lives and the ship and all the goods should be lost.

Chapter lv. Of the declaration of the goods to be made to the ship's clerk.

Further, the merchants ought to make known to the ship's clerk, as soon as the ship has set sail, if they have anything more than is entered in writing. And if anything be found which they have not declared,[2]

[1] *no merchants*] This rule is in accordance with article xxviii. of the Ordinance of Peter of Aragon of A.D. 1340, but that ordinance is silent as regards the case where the merchants did not agree.

[2] *declared*] This subject is more fully discussed in chapters lxviii., lxix., lxx., cxlii., ccxii.

festat, ells ne deven pagar lo major nolit multiplicant per quintalades, que en la dita nau se pague, perco com amagadament la y hauran mesa. E si per ventura ells no la havien manifestada, com la nau havia feta vela, si s'gitava o s'banyava o s'perdia, no li n'serien tenguts de retre, pus manifestada no la haguessen.

Capitol lvi. De entrar en port.

Encara,[1] que l'senyor de la nau o del leny no pot ne deu entrar sens voluntat dels mercaders en port; e si y entrava que l'mercader fos tement de res, tot lo damnatge que hagues lo mercader li deu restituir la nau; e aco deu scrivre l'escriva, iat sia, no sia la nau ab proys en terra. Mas empero, si lo senyor de la nau havia algun necessari, deu dir als mercaders que ell no pot navegar, que exarcia ha mester o enfortir o adobar, e lavors lo mercader deu entrar al port, ab que lo notxer per son sagrament e l's mariners hi sapien. Mas empero,[2] si algun cossari o sagetia hi ha qui fes por al mercader, lo senyor de la nau no y pot entrar sens voluntat dels mercaders. E si lo mercader ho leva sobre si o que no y haia reguart e dige, "Yo no vull entrar " en aquex port," lo damnatge que s'pendra, lo mercader n'es tengut de esmenar.

Capitol lvii. De promesa de

Aci parla[3] dels mercaders, com son tenguts al senyor de la nau, e com no. Los mercaders com se acorden ab

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[1] *Encara*] Esp. 124, chapter lxii. here commences with the Rubric "De entrar en port."

[2] *Mas empero*] Esp. 124. Another chapter (lxiii.) here commences with the Rubric " Capitol de exarcia " enfortir," followed by the words " Mas empero."

[3] *Aci parla*] Esp. 124, chapter lxiv. here commences with the Rubric " Capitol de convinensa de " senyor de nau a mercader."

they ought to pay for it the highest rate of freight that is paid in the ship, multiplying it by quintals, because they have put it on board clandestinely. And if by chance they have not declared it when the ship has set sail, if it be cast overboard,[1] or be spoilt by damp, or be lost, no one is bound to reimburse it, as it has not been declared.

Chapter lvi. Of entering into port.

Further, the managing owner of the ship or the vessel cannot and ought not to enter into a port without the assent of the merchant, and if he has entered when the merchant is afraid of something, all the damage which the merchant incurs, the ship is bound to make good, and the ship's clerk ought to make an entry of it, whether or not the ship be moored to the shore. But nevertheless, if the managing owner of the ship is in want of any necessaries, he ought to tell the merchant that he cannot navigate the vessel, because he requires new apparel or to repair or to careen his vessel, and thereupon the merchant ought to enter the port, provided that the mate and the mariners affirm their knowledge of the fact by their oaths. Nevertheless, if there be any corsair or armed galley which is a cause of alarm to the merchant, the managing owner of the ship cannot enter the port without the assent of the merchant. And if the merchant takes it upon himself without regard to any danger, and says, "I am unwilling to enter this "port," the merchant is bound to compensate all the damage which the ship may incur.

Chapter lvii. Of the promises of the mer-

Here we speak of the merchants,[2] what obligations they have towards the managing owner of the ship, and what not. When the merchant enters into an agreement

[1] *overboard*] The case of jetison of such goods is further considered in chapters cxlii. and ccxii.

[2] *the merchants*] The provisions of this chapter conflict in some respect with those of chapter xxxix.

mercader a patro.

lo senyor de la nau, tota convinenca que l'mercader convenga al senyor, es mester que li attenga, pus al cartolari sia mesa. Posem que l'mercader haura feta carta o al cartolari sia scrit, lo mercader li u deu tot attendre. E si lo mercader conve al senyor de la nau quintalades, vulle s'que l'mercader sia en la nau o defora, e no y pot metre les quintalades, o que no li bast moneta; de aytantes quintalades com li haura promeses, de aytantes li haura a dar nolit, meta o no meta, del que prometra de la quintalada.

Capitol lviii. De mercader que volra descarregar la sua roba.

E si[1] la major forca dels mercaders la n'giten, ell la n'pot gitar, que non pag res; e si lo senyor de la nau no es pagat, no li pot res demanar. Mas lo senyor de la nau es tengut de esperarlo fins a un temps sabut, de levar e de carregar la roba e de portar, co es a entendre, de mercaderia e la roba sua.

Capitol lix. De mercaders que volran descarregar part de mercaderia.

Nau[2] o leny que ira en viatge e per ventura la major partida dels mercaders o de la roba volran descarregar, e fer port, on que sien, la on lo dit viatge sera levat, que l's mercaders puscan descarregar aquella major partida del haver: e l'senyor de la nau pusca forcar de descarregar l'altra part, co es, la menor part que no volra descarregar, e haver tot lo nolit. E si lo senyor de la nau haura feta leixa d'aquell nolit als dits mercaders, qui hauran descarregada la major part, que l'senyor dega leixar del nolit a la altra part; e per aquella manera e de aquell for de aquells primers sien posats tots los altres mercaders. E de l's mariners se

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[1] *E si*] Esp. 124, chapter lxv. here begins with the Rubric "Ca- "pitol de roba a gitar."

[2] *Nau*] Esp. 124, chapter lxvi. here commences with the Rubric "Capitol de nau o leyn qui ira en "viatge."

with the managing owner of a ship, every covenant which the merchant enters into with the managing owner of a ship he is bound to fulfil, if it be entered in the ship's book. Let us suppose that the merchant has made a writing, or that it is written in the ship's book, the merchant is bound to fulfil it. And if the merchant has agreed with the managing owner of the ship for a certain number of quintals, whether the merchant be on board the ship or not, and he cannot put on board the quintals, and he has not sufficient money, of as many quintals as he has promised to put on board he must pay the freight, whether he puts them on board or not, at the rate which he has promised for each quintal.

chant to the managing owner of the ship.

If the greater part of the merchants disembark their goods, he may disembark his goods and pay nothing, for if the managing owner of the ship has not been paid, he can claim nothing. But the managing owner of the ship is bound to wait up to a given time to hoist and to load and to carry the goods, that is to say, the merchandise and goods of the merchants.

Chapter lviii. Of the merchant who wishes to discharge his goods.

If a ship or vessel is on her voyage, and the greater part of the merchants wish to discharge the goods and enter a port, wherever they may be and wherever the voyage may have commenced, in order that the merchants may discharge the greater part of the goods, the managing owner of the ship may force them to discharge the other part, that is the smaller part, which they do not wish to discharge, and have all his freight. And if the managing owner has allowed any deduction from the freight to the merchants, who have discharged the greater part of the goods, he must allow the same deduction from the other part, and all the other merchants must be treated in the same manner and on the same terms as the first merchants. And an abatement

Chapter lix. Of merchants who wish to discharge part of their merchandise.

deu abatre de lurs loguers, segons que la nau fara leixa de nolit.

Capitol lx. De patro qui haura sperat lo mercader.

Si no[1] haura pagat lo nolit al senyor de la nau, com lo haura sperat aquell temps que haura ab ell empres que haien bones noves, lo mercader deu carregar la sua roba. E si no la vol carregar, deu pagar tot lo nolit al senyor de la nau.

Capitol lxi. Com mercader deu prestar al patro en cas de necessitat.

Encara[2] es tengut lo mercader al senyor de la nau, que si lo mercader havia moneda, e que fossen en loch que l'senyor de la nau hagues ops exarcia, ne res que necessari fos a la nau, lo mercader la li deu prestar, axi com lo notxer e l's altres mercaders conexeran que faea a fer. E per aytal rao, tots los personers qui en la nau seran e l's prestadors se deven tots obligar al dit mercader. E si lo senyor de la nau o los personers o los prestadors trobaven algun home qui l's prestas, lo davant dit mercader no es tengut de res a ells prestar.

Capitol lxii. Com mercader deu prestar a patro per espatxa-

Encara mes,[3] que si lo senyor de la nau ha ops moneda, e no n'troba axi com desus es dit, e que fos en loch agrest, e que aquella moneda hagues ops a espatxament de la nau, e si los dits mercaders no y han moneda, ells deven vendre de la lur mercaderia

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[1] *Si no*] Esp. 124, chapter lxvii. here commences with the Rubric "De nolit qui no sera pagat."

[2] *Encara*] Esp. 124, chapter lxviii. commences here with the Rubric "De manlevar moneda a necessari de nau."

[3] *Encara mes*] Esp. 124, chapter lxix. commences here with the Rubric "Di manlevar moneda."

ought to be made of the mariners' wages in proportion to the deduction allowed from the ship's freight.

Chapter lx. Of the managing owner who has waited for the merchant.

If the merchant has not paid the freight to the managing owner of the ship, the merchant ought to load his goods, when the managing owner shall have waited during the time agreed upon with him to have good news. And if he is not willing to load his goods, he ought to pay the whole freight to the managing owner of the ship.

Chapter lxi. How the merchant ought to lend to the managing owner in case of necessity.

Further, the merchant is bound to the managing owner of the ship, in such manner that if the merchant has money, and they are in a place where the managing owner of the ship has need of ship's apparel or things which are necessary for the ship, the merchant ought to lend it to him according to what the mate and the other merchants adjudge to be done. And for such reason all the part-owners who shall be in the ship and any earlier lenders ought to be bound [1] to the said merchants. And if the managing owner of the ship or the part-owners or the earlier lenders can find anyone who will lend, the aforesaid merchant is not bound to lend anything to them.

Chapter lxii. How the merchant ought to lend to the managing

Further, if the managing owner of the ship has need of money and cannot find it as abovesaid, and is in a desert place, and has need of money to refit his ship, and if the said merchants have no money, they ought to sell some of their goods to refit the vessel, and no

[1] *bound*] The privilege of prior payment on the part of the merchants in this case was founded on the principle, which is at the foundation itself of the contract of bottomry, namely, that the loan was for necessaries. This principle was sanctioned by the Roman law, Digest, lib. xx., tit. iv., fr. v. Interdum posterior potior est priori; ut puta si in rem istam conservandam impensum est quod sequens eredidit, veluti si navis fuit obligata et ad armandam eam vel refieiendam ego eredidero.

ment de la nau.

pera espatxar la nau; e nul prestador ni personer no y pot res dir ni contrastar en tro que aquells mercaders seran pagats, salvo lo loguers dels mariners. Empero fa a entendre, que l'mercader veia e conega que aco que ell prestara sia espatxament de la nau e necessari de ella.

Capitol lxiii. Com mercader deu prestar vianda a la nau.

Encara,[1] es tengut lo mercader, que si ell ha vianda e la vianda fallia als mariners o als altres qui en la nau fossen, ell la deu posar en comu, e lo senyor de la nau deula partir per tots cominalment, e l'mercader no se n'pot retenir mes que un altre hom. E com lo senyor de la nau sera en algun loch de recobre de vianda, lo mercader li n'pot demanar tota aytanta com li n'hauran presa,[2] e lo senyor de la nau es li tengut que la li reta.

Capitol lxiv. De ancora o exarcia lexada, renunciada als mercaders.

Encara,[3] son tenguts los mercaders, que si lo senyor de la nau vol surgir en costera o en port o en altre loch on se dubte, aco faca ab voluntat e ab acort dels mercaders. E si l's mercaders ho volen e l'senyor de la nau los ho renuncia, si ancora o exarcia hi romania, los dits mercaders ho deven tot pagar, pusque l'senyor o hom tinent son loch renunciat los ho haura. Encara mes, son tenguts, que si nau o leny lexara ancores en sparagol, o en altre loch on les hauran surtes, e les lexara ab voluntat de l's mercaders, sien pagades cominalment per tota la roba de la nau, e l'cors de la nau no y pag res. E si les jaquira per por de leny armat, sien pagades de comu de tot l'aver, e la nau deu

[1] *Encara*] Esp. 124, chapter lxx. commences here with the Rubric "Di vianda de mercader."

[2] *hauran presa*] This is the reading of Esp. 124, and of the editions of 1494 and 1502. Hauran promesa has been substituted in the editions of 1517 and 1523, but on what authority does not appear.

[3] *Encara*] Esp. 124, chapter lxxi. here commences with the Rubric "De sorgir en costera, o en port."

preceding lender nor part-owner can say or object that the said merchants shall be paid, saving always the wages of the mariners.[1] Nevertheless, it is to be understood that the merchant sees and is satisfied that what he lends is for the repair of the ship and necessary for her. owner for the despatch of the ship.

Chapter lxiii. How the merchant ought to lend provisions to the ship.

Further, the merchant is bound, if he has provisions, and if provisions fail the mariners or others who are on board the ship, to place them at the common service,[2] and the managing owner of the ship is bound to distribute them amongst all in common, and the merchant cannot keep more than any other man. And when the managing owner of the ship shall be in any place where he can replace the provisions, the merchant may claim as much as shall have been taken, and the managing owner of the ship is bound to replace them.

Chapter lxiv. Of an anchor or apparel left behind after declation to the merchants.

Further, the merchants are liable, if the managing owner of the ship wishes to cast anchor off the coast or in a port or in another place which is doubtful anchorage ground, and he does so with the assent and accord of the merchants. And if the merchants wish it, and the managing owner of the ship has objected to it, in case that the anchor or tackle remain behind, the said merchants ought to pay for it all, since the managing owner of the ship or his lieutenant has objected to it. Still more are they liable if the ship or vessel shall leave her anchors in a gulf or in any other place where they have anchored; if he shall leave them behind at the desire of the merchants, let them be paid for in common by all the goods on board the ship, and the hull of the ship shall pay nothing. And if he shall leave them behind from fear of an armed ship, let them

[1] *wages of the mariners*] The preferential claim of the mariner to his wages is recognised in ch. xiii., xviii., xciv., cxiii., cxlviii.

[2] *the common service*] This obligation was enforced by the Roman law, Dig. lib. xiv. tit. ii. fr. 2, § 2. De lege Rhodia de jactu.

hi metre per la meytat d'aco que valra. E si jaquira barca ne homens en algun loch ab voluntat dels mercaders, la roba dels mercaders pag la barca, e faca la messio dels homens, entro que sien en aquell loch on la nau o leny haura fet port; e l'cors de la nau no y pag res.

Capitol lxv. De barca lexada.

Si nau[1] o leny tirara barca e omple, e la tira plena, si los mercaders volen que la lexen anar, la barca sia lexada, e sia pagada per tot l'aver, e lo cors de la nau no y pag res: e si romp lo cap menys de lexarla anar, e que no sia voluntat dels mercaders, los mercaders no sien tenguts de res a pagar.

Capitol lxvi. De git fet in absencia dels mercaders.

Si algun[2] senyor de nau o de leny haura carregada la sua nau o lo sen leny en algun loch; si ell stara surt en algun altre loch, o en aquell metex on haura carregat, e tots los mercaders seran en terra que en la nau o leny no haura algu romas, si no tant solament lo senyor de la nau o del leny ab los mariners; si aqui vendran lenys armats de enemichs o s'metra temporal soptosament, que l'senyor de la nau o del leny ne pora fer levar los mercaders, e per qualsevol de aquestes condicions desusdites, lo senyor de la nau o del leny se haura a levar, e los mercaders romandran en terra, si al senyor de la nau o del leny convendra a gitar, o sia que git per destret d'aquells lenys armats perco que mils los pusca fugir, e que mils se pusca d'ells defendre, o sia que l'temporal lo faca gitar; per

[1] *Si nau*] Esp. 124, chapter lxxii. here commences with the Rubric "De nau o leyn qui tirara barcha."

[2] *Si algun*] Esp. 124, chapter lxxiii. here commences with the Rubric "Si senyor de nau aura carregada la sua nau, si stara surt."

be paid for in common by all the goods on board, and the ship ought to contribute for half its value. And if she shall leave behind a boat or men in any place at the desire of the merchants, the goods of the merchant shall pay for the boat, and defray the expenses of the men until they shall arrive at the place, where the said ship or vessel shall have gone into port, and the hull of the ship shall pay nothing.

Chapter lxv. Of a boat left behind.

If a ship or vessel is towing its boat and the boat fills, and the ship tows it full of water, and the merchants desire that it should be let go, the boat shall be left behind and shall be paid for by all the goods, and the hull of the ship shall pay nothing; and if the tow rope shall break without any intention to let go the boat, and this is not done at the desire of the merchants, they are not bound to pay anything.

Chapter lxvi. Of jetison made in the absence of the merchants.

If any managing owner of a ship or vessel has loaded has ship or his vessel in any place, if she shall be safely anchored in some other place, and whilst she is loading there and whilst all the merchants are on shore, so that no one remains in the ship or vessel except only the managing owner of the ship or of the vessel with the mariners, if armed ships of an enemy come there, or if a tempest suddenly comes upon them, so that the managing owner of the ship cannot take on board the merchants, and for some or other of the conditions above mentioned the managing owner of the ship or the vessel has to heave in his anchor, and the merchants remain on shore, if it seems proper to the managing owner of the ship or the vessel to cast overboard some goods, or if he makes jetison [1] from dread of the said armed vessels in order that he may make his escape more easily, or that he may defend himself better against them, or that the tempest compels him to cast goods

[1] *jetison*] This chapter is supplemental to chapters l. and liv.

qualsevol de les condicions desusdites que ell git o faca gitar, val aytant com si tots los mercaders hi eren. En aquesta guisa, empero, que co, que ell faca, que ho faca ab consell e ab voluntat de tot lo cominal de la nau o del leny, e aytambe l'escriva que pens de scrivre totes les convinences que s'empendran en presencia de tot lo cominal. E si l'escriva a quella hora o en aquella sao no u podia scrivre, scrigan tantost com la nau o lo leny tendra prois en terra e abans que l'escriva isca en terra. E si fer ventura l'escriva sera romas en terra ab aquell mercaders, e en la nau o leny haura alguns servicials de aquells mercaders, lo senyor de la nau o leny deu fer aplegar tota la companya de la nau e aquells servicials de aquells mercaders, e aqui ab tots tenir capitol, e lo senyor de la nau o del leny deu dir o fer dir davant aquells servicials e tot lo cominal de la nau, tantes vegades les convinences que ell ab ells empendra, que quascu ne sia be membrant; perco que quant aquell senyor de la nau se encontrara ab aquells mercaders que romasos seran no y pusca haver algun contrast, ne encara algun d'aquells qui en aquell capitol fos stat no pogues dir que ell no u havia oit ni l'havia hom demanat. E si lo senyor de la nau o del leny fara axi com desus es dit, deu haver valor axi com si tots los dits mercaders hi heren stats o la major partida. Encara mes, si a quella nau o a quell leny vendra cas de ventura, que per rao dels lenys armats desusdits o per rao del temporal haura anar en terra, si lo senyor de la nau o del leny fara o haura fet axi, com desus es dit, ab consell de tots aquells qui desus son dits e ab lur sabuda e ab lur voluntat; tota convinenca o empreniment que l'senyor de la nau o del leny haura feta ab tots aquells qui desus son dits, e en aquella

overboard, for whichever of the above reasons he casts overboard or orders to be cast overboard goods, the jetison is as valid as if all the merchants were present. In this manner however, that what he does, he does at the desire and with the consent of the whole crew of the ship or the vessel, and that the ship's clerk takes pains to write out all the arrangements which are entered into in the presence of all the crew. And if the ship's clerk at that hour and at that season cannot write them out, he should write them out as soon as the ship or vessel is moored to the shore, and before the ship's clerk goes on shore. And if by chance the ship's clerk should remain on shore with those merchants, and in the ship or vessel there should be any servants of those merchants, the managing owner of the ship or vessel ought to assemble all the crew of the ship and those servants of those merchants, and there hold a council of them all, and the managing owner of the ship or vessel ought to declare or to have declared before those servants and all the crew of the ship the arrangement which he has made with them sufficiently often that all may remember them ; in order that when that master of a ship shall meet with those merchants, who shall have remained behind, there can be no dispute, and further that none of those who may have been in that council may be able to say, that he did not hear it, and that no one demanded it. And if the managing owner of the ship or vessel shall do as above said, it ought to be as valid as if the merchants or the greater part had been present. Still further, if a case of misfortune happens to that ship or vessel, that by reason of armed vessels as abovesaid, or by reason of a tempest, she has to be run ashore, if the managing owner of the ship or vessel shall do or have done as above described with the counsel of all those above mentioned and with their knowledge and at their desire, every arrangement or undertaking, which the managing owner of the ship or vessel shall

guisa, o en aquella manera, que desus es dita, mercader negu ne altre algu no y pot metre contrast. E si n'y met, ha s'a parar a tot dan e a tot destrich e a tot greuge e a tota messio que l'senyor de la nau o del leny, a qui aytal cas com desus es dit sera vengut, ne sostendra per culpa del contrast que algu d'aquells, qui desus son dits, li hauran mes, o li metran. E tot aco que desus es dit, deu esser fet menys de tot engan e menys de tot frau. E si algu de tots aquells, qui desus son dits, frau algu mostrar o provar pora per alguna justa rao, aquell o aquells contra qui aquell frau provat sera, deuse parar a tot dan e a tot interes d'aquella part, que aquell frau provara contra ella esser fet. Empero, la prova del frau sobredit, que sia provat per persones qui sien de gran esser, menys de tota suspita; encara, que sien homens qui sapien e deguen saber de la art e del fet, en que ells seran trets en testimoni. Per qual rao? perco, que si volets dire que bastaixos o vils homens, que hom pogues girar per diners, valgues lo testimoni que ells farien, seria mala cosa; perco, car ab mals homens que l'senyor de la nau donas per testimonis contra los mercaders, si creguts eren, lo senyor de la nau poria desfer los mercaders a les vegades, perque testimoni, que vil home face e qui hom pusca girar per diners, no val ne deu haver valor per neguna rao.

Capitol lxvii. Com se paguen averies.

Tota messio[1] o convinenca, que de mercaderia sia de averies, se deu pagar per sou e per livra per los mercaders, salvo empero carregar. Si donchs no s'havia a levar per fortuna de mal temps o d'altre cas que s'y esdevenga, co es per entrar en port o en freu o en

[1] *Tota messio*] Esp. 124, chapter lxxiv. here commences with the Rubric "Capitol de convinensa de "mercaderia."

have entered into with all those above mentioned and in the form and in the manner above described, no merchant nor other person has power to dispute. And if he disputes them, he has to support all the loss, and all the damage and all the prejudice and all the expense, which the managing owner of the ship or vessel, to whom that case of misfortune has happened, shall sustain from the fault of the dispute, which any person or persons above mentioned shall have raised. And all as abovesaid ought to be performed without any malice or fraud. And if any one of all those, who have been mentioned above, can show and prove any fraud by any just reason, he or they against whom that fraud has been proved, ought to support all the loss and all the interest of that party, who can prove that fraud to have been worked against them. Nevertheless the proof of the fraud above mentioned must be made by persons who are of good substance and free from all suspicion, besides they should be men who know and ought to know the art and the practice respecting which they are called in to bear testimony. For what reason? because if men were to say respecting porters and vile persons, whom a man can turn round by money, that the testimony which they bear is of value, it would be a grievous matter, for if evil men, whom the managing owner of a ship may put forward as witnesses against the merchants, were believed, the managing owner might ruin the merchants at times, inasmuch as the testimony, which vile persons make and which a man may turn round by money, has not and ought not to have any value for any reason.

Chapter lxvii. How average is to be paid.

All outgoings or agreements which are an average on the merchandise, ought to be paid by shillings and pounds by the merchants, saving always the loading of the goods. If then it is not possible to carry them forward from misfortune of bad weather or some other accidental occurrence, which compels them to enter into

loch on se pogues salvar la dita mercaderia o la dita nau o leny, en aytal cas deu fer la una roba e l'altra per sou e per livra o per besant. E si no ha en la nau mercader qui haia aytant com l'altre de mercaderia, o sien cinch de la una parte e dos o tres de l'altra, que aquells mercaders dos pus haguessen tanta o mes mercaderia que aquells cinch, tot co, que convenguessen per pagar de averies, se deu pagar cominalment axi be de la poca mercaderia com de la molta. Empero, que sia fet lealment menys de frau, e que no s'y faca res per voluntat, e aco deven jurar tots los mercaders que ho facan lealment. Empero, aquest capitol va a la esmena de la nau de res que li prometran de restituir; car la nau ha aytal privilegi, que si los mercaders li prometen res de esmenar, es mester que li u attenguen, iat sia no sia scrit, sol que l'escriva hi sia o que u oia; e l'escriva deu ho scrivre quant la nau tendra prois en terra, que la donchs anava per mar quant la convinenca fon feta.

Capitol lxviii. Qui es dit pelegri.

Aci[1] parlarem que deu fer senyor de nau o de leny a pelegri, e pelegri a senyor de nau o de leny; car axi com fara nau, axi deu fer leny. Tot hom es appellat pelegri, qui do nolit de la sua persona e de roba qui no sia mercaderia, e tot hom qui port de deu quintars en avall, deu donar nolit de la sua persona; e no pot

[1] *Aci*] Esp. 124 chapter lxv. here commences with the Rubric "Capitol que deu fer senyor de nau a palagrins."

a port or a strait or a place where one may save the said merchandise or the said ship or vessel, in such a case the one and the other portion of the cargo ought to make contribution by shillings and pounds, or by besants. And if there is not in the ship any merchant who has as much merchandise as another, or there be five on the one part and two or three on the other, and the latter two have as much or more merchandise than the five former, all that which it may be agreed upon to pay as average, ought to be paid in common as well by the few as by the many. Nevertheless, let it be done loyally, without any fraud; and nothing should be done by design; and to this all the merchants should swear that they have acted loyally. However the object of this chapter is to indemnify the ship in respect of every thing, which they have promised to restore to it, for the ship has this privilege, that if the merchants promise to indemnify it for any loss, it is incumbent that they should keep their promise, whether it be written or not, provided only that the ship's clerk was present and heard it, and the ship's clerk ought to write it when the ship shall be moored to the shore,[1] inasmuch as the ship was at sea when the contract was made.

Chapter lxviii. What person is called a passenger.

Here we speak of what a managing owner of a ship or vessel ought to do to a passenger, and what a passenger should do to the managing owner of a ship or vessel, for according as a ship does, any other vessel does. Every man is called a passenger[2] who pays freight for his own person, and for goods which are not merchandise. And every person who carries less than two quintals ought to pay freight for his own person,

[1] *To the shore*] Further provisions on this subject will be found in chapter ccviii.

[2] *passenger*] This agrees with the definition previously given in chapter i.

esser mercader qui de vint besants en avall dona de nolit. E lo senyor[1] de la nau no es tengut a aquell de deu quintals en avall, de portar caxa ne companya[2] ne roba, si ab lo senyor de la nau ne se n'ave. E si met roba en la nau, que no u veja lo senyor o l'escriva o altre qui lo senyor de la nau o l'escriva haia mes en son loch per noliciar o per veure tota quanta n'y metra; e si aquell no u ha vist o lo senyor o l'escriva, pot demanar lo major nolit qui s'do en la nau de alguna roba, multiplicant le bolum de la roba o de la mercaderia ab l'altra qui hi sera; e en aquella manera meteixa, de persona qui entra menys de voluntat del senyor o del scriva en la nau, es en voluntat del senyor de pendre quin nolit se volra.

Capitol lxix. De roba mesa sens sabuda del patro o del scriva.

E si tant[3] sera que la nau fos maca carregada, o lo senyor de la nau no la vulla portar, l'escriva la deu fer gitar en terra; e a negun damnatge que prenga la roba, lo senyor de la nau no n'es tengut, pur que al cartolari

[1] *E lo senyor*] Esp. 124, another chapter (lxvi.) here commences with the Rubric "Capitol que sen- "yor de nau no es tengut a aquell "de x. quintars avall."

[2] *companya*] In the Ordinance of King James I. of Aragon of A D. 1258 it is provided: Item ordinamus, quod lignum cum duabus coopertis non mittat nec deferat aliquos merces de medio arbore usque ad puppem, nisi tantum barcham suam cum suis apparamentis et *companyas* suorum mercatorum.

[3] *E si tant*] Esp. 124, chapter lxxvii. commences here with the Rubric "Capitol de nau o leyn, qui "sia trop carregada."

and he cannot be considered to be a merchant who pays less freight than twenty besants. And the managing owner of the ship is not bound to him who has less than ten quintals on board to carry his chest nor his victuals [3] nor his goods, if he has not agreed with the managing owner of the ship. And if he puts goods on board the ship and neither the managing owner of the ship nor the ship's clerk nor any other person, whom the managing owner of the ship or the ship's clerk has appointed in his place to receive goods on freight or to see how much will be put on board, has seen them, and if the latter or the managing owner himself of the ship or the ship's clerk has not seen them, the managing owner may demand the highest freight which is paid for any goods in the ship, multiplying the bulk of the goods or of the merchandise in proportion to the other goods which shall be there: and in this same manner with regard to any person who may come on board the ship without the consent of the managing owner or of the ship's clerk, it is in the power of the managing owner to take what freight he pleases.[2]

Chapter lxix. Of goods put on board without the knowledge of the managing

And if it shall happen that the ship is overloaded, and the managing owner of the ship does not wish to carry the goods, the ship's clerk ought to cause them to be put ashore, and the managing owner of the ship or vessel is not responsible for any damage which the goods may suffer, since they are not entered in the

[1] *victuals*] The word "com-" panyo" occurs in the Catalan text of chapter xxxii., where it appears to be a word of like meaning with "companatge," as used in chapter c. The translation, adopted by the Editor and by Westerveen in his Dutch translation of the Consulate, derives some support from the ancient Statute of Marseilles, l. iv. ch. xxiv. "Hiis etiam illud adjungi-" mus quod nullus dominus navis " recipiat peregrinum vel recipi " paciatur in navi, nisi, secundum " quod consuetum est, locum sen " plassam et victualia in ipsa nave " habeat, et scriptus sit in cartulario " navis. See chapter c. below.

[2] *he pleases*] that is the highest freight charged for any passenger.

no fos scrit; co es a entendre, quant la nau haura feta vela e sera fora del port, los mercaders e los mariners e los pelegrins e tota persona que en la nau haia mesa roba, deu venir e manifestar al scriva la roba que en la nau haura mesa; e si no u fa, d'algun damnatge que hagues la roba o la mercadaria no n'sera tengut lo dit senyor ne l'escriva.

Capitol lxx. Roba no manifestada.

E si nau[1] gitava per fortuna o per altra ventura que li esdevengues, e gitava la roba, veent per algu, de aquell mercader o pelegri o mariner o de altra qualsevol persona, que no fos scrita en lo libre o en les taules o al scriva o al senyor no fos manifestada o a hom que l'senyor o l'escriva hi hagues mes en loch d'ells per veedor, 'e la roba se gitava o s'perdia o s'banyava; lo senyor de la nau no es tengut de restituir per testimonis que y hagues, qui la haguessen vista carregar. E si la roba sera trobada al descarregar, sia a voluntat del senyor de pendre lo nolit que volra, e lo dit mercader li deu pagar aquell, sens tot contrast. Mas, si l'escriva la havia scrita abans o despuix que la dita nau havia feta vela, tot lo damnatge que la roba pendra, deu esser tengut lo senyor de esmenar e restituir sens tot contrast.

Capitol lxxi. De que es tengut lo

Encara[2] mes, es tengut lo senyor de nau als pelegrins de donar placa e aygua, e portar la on los haura convengut, o fer portar. E si ell n'a pres senyal, ell

[1] *E si nau*] Esp. 124, chapter lxxviii. commences here with the Rubric "De nau o leyn qui gitara "por fortuna de mal temps." On the margin in another hand, the following words have been added in black ink, "Roba que no sia "scrita en cartolari e sia trobada "al descarregar lo patro pot de- "manar lo nolit que volra."

[2] *Encara*] Esp. 124, chapter lxxix. commences here with the Rubric "Capitol que senyor de nau "es tengut de donar plassa a pala- "grins."

clerk's register; that is to say, when the ship has set sail and shall be out of port, the merchants and the mariners and the passengers, and every person who has put goods on board, ought to come and declare to the ship's clerk the goods which he has put on board, and if he do not, neither the managing owner nor the ship's clerk is liable for any damage [1] which the goods or the merchandise may sustain. owner, or of the ship's clerk.

Chapter lxx. Of goods not manifested.

And if the ship has to cast overboard by misfortune or other accident, and casts overboard goods in the presence of any one, belonging to any merchant or passenger or mariner or other person whatsoever, which have not been inscribed in the ship's book or in the clerk's tablets, or have not been declared to the managing owner or to the ship's clerk, or to the person whom the managing owner or the ship's clerk has substituted in his place to inspect the goods, and the goods are lost or spoilt, the managing owner of the ship is not bound to restore them, although the person may have witnesses who saw them loaded. And if the goods shall be discovered at the time of discharging the cargo, it shall be at the discretion of the managing owner to take what freight he shall choose, and the said merchant must pay it without any dispute.[2] But if the ship's clerk has entered the goods before or after the ship has set sail, all the damage which the goods may receive, the managing owner is bound to compensate and to restore.

Chapter lxxi. Of the liabilities of the managing

Further, the managing owner of the ship is bound to find place and water for the passengers, and to convey them whither they have covenanted to be conveyed; and if he has received earnest money, he ought to fulfil

[1] *damage*] This principle is more fully discussed in chap. ccxii.

[2] *dispute*] Further provisions in the case of goods clandestinely put on board will be found in chapters cxlii. and ccxii.

patro al pelegri.

los deu attendre co que l's haura promes: empero lo pelegri que s'manifest lo terc jorn davant lo senyor o l'escriva: e lo pelegri deu donar [1] paraula al senyor, e si l'senyor los dona terme, mes que no deu, e lo pelegri roman, tot lo nolit deu retre, e lo damnatge que aquell haura rebut, tot lo li deu restituir lo senyor de la nau. E si l'pelegri se n'va sens paraula o no es vengut al terme que la nau fara vela, si l'pelegri havia donats mil marchs de senyal o que hagues pagat tot lo nolit, lo senyor no li es tengut de retre res.

Capitol lxxii. De placa donadora a pelegri, e si mor en nau.

Senyor [2] de nau deu donar placa a pelegri o home per ell, co es a dir lo notxer; e lo pelegri deu haver aquella placa que hom li haura donada e assignada. E si l'pelegri mor, ell pot jaquir la placa a qui s'volra; e deu esser la millor vestidura que ell haia, del notxer; e la moneda, si no y ha parent, deula prendre lo senyor, e lo senyor deula estoiar e tenir fins a tres anys. E a cap de tres anys, si no li es demanada, ell la deu donar per anima d'aquell, en presencia del bisbe de la terra. E l'escriva es tengut per aquell cap meteix de manifestar al bisbe o al senyor de la terra e scrivre la dita moneda e totes les coses del mort; e ell deune tenir un scrit e altre los mercaders e altre lo senyor de la nau. E quant seran tornats en la terra,

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[1] *donar*] Capmany and Pardessus are both of opinion that "de- "manar paraula" is the reading required by the context, and that "donar paraula" is an error, which has crept into the text from a misreading of some ancient MS. The editions of 1494 and 1502 concur with Esp. 124 in the common reading.

[2] *Senyor*] Esp. 124, chap. lxxx. here commences with the Rubric "Capitol que senyor de nau deu "donar plassa a palagri."

owner to the passengers.

all that he has promised, nevertheless the passenger ought to appear the third day before the managing owner or the ship's clerk, and demand leave of absence from the managing owner; and if the managing owner assigns him a term longer than he ought, and the passenger remains behind, the managing owner of the ship is bound to return him his freight, and to. make good all the damage which he may have sustained. And if the passenger goes away without leave of absence, and does not come at the term when the ship sails, if the passenger has paid a thousand marks of earnest money, or if he has paid the whole freight, the managing owner is not bound to return any of it.

Chapter lxxii. Of the place assigned to the passenger, and if he dies at sea.

The managing owner of a ship or his agent, that is to say, the mate ought to assign a place to each passenger, and the passenger ought to have that place which has been given and assigned to him. And if the passenger dies, he may leave the place to whom he will; and the best vestment, which he has, shall go to the mate; and his money, if he have no relations, the managing owner ought to take into his possession, and the managing owner ought to preserve and keep it, until he shall be in the place where it may be claimed from him, up to the end of three years. And at the end of three years, if it be not claimed from him, he ought to give it for the repose of his soul in the presence of the bishop of the territory. And the ship's clerk is bound at the end of this period to make a declaration to the bishop or to the lord of the territory, and set forth in writing the amount of the money and all the effects of the deceased, and he ought to keep a copy, and the merchants another, and the managing owner of the ship another. And when they shall have come to land, the

l'escriva deu mostrar aquell scrit al bisbe o a son lochtinent o al clergue qui tinga la cura de aquell loch, e lo clergue deu metre en scrit allo al libre de la esglesia. E si lo senyor de la nau no es suficient de tenir aquella moneda, que ell sia mal mercader o mal baratador, ell la deu assegurar. E si no la pot assegurar, ell la deu metre en loch, que si ve demanador fins al terme dels dits tres anys, que la pusca haver; e si lo senyor de la nau moria, la moneda fos posada en loch que fos salva.

Capitol lxxiii. Dret de patro d'aquell qui mor en nau.

Aco[1] desusdit deu haver lo senyor de la nau en guasardo lo lit e lo vestit del pelegri, en fora aquell que deu haver lo notxer. Mas empero, lo senyor de nau no deu haver tant del poch com del molt; que de cent besants en avall no deu aver sino lo vestit, et tot l'altre deu stoiar e vendre e ferne diners.

Capitol lxxiv. Excepcio del damunt dit.

Mas[2] si algun home, qui vaia per viatges per son cors, es comptat per pelegri e s'y mor, lo senyor de la nau ne notxer ne hom de la nau no n'deu haver res; mas si es pelegri que vaia en ultramar o en altra pelegrinatge, ells deven haver axi com desus es dit; car molts homens son qui van de un viatge en altre ab poca mercaderia o van en altre loch per poblar, e son

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[1] *Aco*] Esp. 124, chapter lxxxi. commences here with the Rubric "Capitol de palagri qui morra."

[2] *Mas*] Esp. 124, chapter lxxxii. commences here with the Rubric "Capitol de hom qui vage per "viatges."

ship's clerk ought to show that writing to the bishop,[1] or his coadjutor, or to the clergyman who has the care of souls in that place, and the clergyman ought to enter it in the register of the church. And if the managing owner is not a safe person to keep that money, seeing that he is a bad merchant or a spendthrift, he ought to find sureties; and if he cannot find sureties, he ought to deposit the money in a place where, if he comes to claim it after the term of the said three years, he will be able to have it; and if the managing owner of the ship should die, the money will have been placed in a place of safety.

Chapter lxxiii. The right of the managing owner as regards the effects of the person who dies on board ship.

In the case aforesaid, the managing owner of the ship ought to have, in recompense, the bed and the clothes of the passenger, excepting that which the mate ought to have. Nevertheless, the managing owner of the ship ought not to have so much from a small value as from a large value; for if it be below the value of a hundred besants, he ought not to have more than the clothes, and everything else he ought to preserve and to sell and convert into money.[2]

Chapter lxxiv. Exception to the above.

But if any one, who goes on a voyage with his person only, is counted as a passenger, and if he dies, neither the managing owner of the ship nor the mate, nor any-one of the ship ought to have anything; but if he is a passenger who goes beyond the seas, or upon a more distant voyage, they ought to have as abovesaid; for there are many persons who go upon one voyage after another with little merchandise, or go to another place

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[1] *the bishop*] The ancient Statute of Marseilles, l. iv. ch. xxiv., had a similar provision, requiring the managing owner of a passenger ship to deposit in some religious house the effects of any passenger dying on the voyage, there to be kept for a year and a day for his heirs to claim, after which time it was to go to the curia and the consuls of Marseilles.

[2] *money*] This chapter is united to the next following chapter in the Italian translation of the Consulate.

dits pelegrins, e de aquells aytals no n'deu haver res lo senyor de la nau. Mas lo senyor, si consol no ha en la nau, si algun hom hi mor, ell es tengut de guardar la roba del mort, si l'mort no ha fet testament, e no u havia jaquit a hom de qui hagues fet son procurador e son marmessor en la nau o son hereu. E si no y havia parent seu, lo senyor de la nau deu guardar la roba e la deu retre a sos parents, o a sa muller, o a sos fills, o a aquells, a qui mils deia esser retuda. E l'escriva deu aco scrivre tot, e retenir un scrit e lo senyor altre, e fer axi com desus es dit e stablit.

Capitol lxxv. Dret de barquer e guardia de pelegri qui mor en nau.

Lo barquer[1] de la nau deu haver del pelegri, qui morra, les sabates e l'coltell e la correia; e lo guardia de la nau deu haver les calces; e lo barquer e lo guardia ab dos ensemps devenlo sebollir en terra o en altre loch, o gitar en mar.

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[1] *Lo barquer*] Esp. 124, chapter lxxxiii. commences here with the Rubric "Capitol de palagri qui "morra."

to settle themselves there, and are called passengers, and from all such persons the managing owner of a ship ought to have nothing. But the managing owner of a ship, if there be no consul[1] on board the ship, if a man dies, is bound to preserve the goods of the deceased, if the deceased has not made a testament and has not left any person on board as his representative, and his executor in the ship, or his heir. And if he has no relative, the managing owner of the ship ought to preserve the goods, and ought to restore them to his wife or to his son, or to those to whom the better part ought to be given. And the ship's clerk ought to write all this and retain a copy, and the managing owner ought to have another copy, and do as is above said and laid down.

Chapter lxxv. The right of the boatswain and of the watchman with regard to a passenger who dies.

The boatswain[2] of the ship ought to have the shoes and the knife and the girdle of the passenger who dies, and the watchman[3] of the ship ought to have his breeches; and the boatswain and watchman together ought to bury him in the earth or to cast him into the sea.

[1] *no consul*] This is the only place in the Consulate, where the word 'consul' occurs. The consul here intended was authorised to administer justice on board the ship, and to settle all disputes between his countrymen when they went ashore. M. Pardessus, T. v. p. 345, traces back the institution of consuls to the middle of the 12th century. An ordinance of St. Louis of France, of 1246, and the ancient Statute of Marseilles, lib. i. ch. xvii., attests their presence on board of French ships in the middle of the thirteenth century, whilst the xxi. article of the Ordinance of James I. of Aragon, of 1258, enjoined the appointment of "duo proceres" on board of each ship sailing from Barcelona, whose duty it should be to administer justice on board the ship during the voyage. M. Pardessus has printed this ordinance in his collection of Lois Maritimes, Tom. v. p. 339.

[2] *boatswain*] The Catalan word "barquer" has been translated "patron" by M. Pardessus. The Editor ventures to think that an inferior officer of the ship is here meant, namely, the mariner who had charge of the ship's boat. The word "barquer" is used in the sense of "boatman" in chapters cx. cliii. and cliv.

[3] *watchman*] It was probably the practice to remove the bodies of the dead from the ship at night.

Capitol lxxvi. De la vianda del pelegri qui morra en nau.

Encara[1] mes, que la vianda del pelegri e de tot altre home qui morra en la nau deu esser donada al senyor de la nau. E aquest capitol es axi fet entenent dels pelegrins e des altres homens qui vagen de un loch en altre, axi com desus es dit.

Capitol lxxvii. De nolit pagat, si l'pelegri resta; e de nolit de roba.

Si algun[2] hom d'aquests havia donat nolit al senyor de la nau, e volgues romandre, lo senyor no li es tengut de retre lo nolit. Encara, si algun pelegri o altre hom o mercader nolieiara al senyor de la nau, e com seran en terra o en altre loch e volra vendre son haver e que no li bast aquell haver al seu nolit, quascu paga son nolit, valla e no valla aquest present haver que devra pagar son nolit. E si lo mercader haura altre haver qui fos millor, aquell millor no ha damnatge per lo pus avol; e axi s'paga lo nolit als senyors de les naus o dels lenys. E perco fon fet aquest capitol, que l's mercaders no poguessen un a altre enganar, ne manlevar sobre aco que no valria, sino en lo principal haver.

Capitol lxxviii. De que es tengut pelegri.

Aco[3] deu fer pelegri a senyor de nau e tot hom qui en la nau vaia; que es tengut de ajudar e de salvar e guardar la nau e de no abandonar entro al cap del viatge, si donchs no u fahien ab voluntat del senyor de la nau. E perco fo fet aquest capitol, car molts senyors de naus leven manestrals per pelegrins e homens d'armes, e l's fan millor mercat del nolit que no farien, si sabessen que se n'volien exir, e molts mercaders no s'y metrien, sino perco, car saben que homens

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[1] *Encara*] Esp. 125, chapter lxxxiv. commences here with the Rubric "De vianda de palagri."

[2] *Si algun*] Esp. 124. chapter lxxxv. commences here with the Rubric "De nolit que null hom aja " dat al senyor de la nau."

[3] *Aco*] Esp. 124, chapter lxxxvi. commences here with the Rubric " De so que deu fer lo palagri a tot " hom que vaja en nau."

Chapter lxxvi. Of the provisions of the passenger who dies in the ship.

Further, the provisions[1] of the passenger and of every other person who dies in the ship ought to be given to the managing owner of the ship. And this chapter has been made with regard to passengers, and other persons who go from place to place as abovesaid.

Chapter lxxvii. Of freight paid, when the passenger remains behind, and of the freight of goods.

If any of those above mentioned has paid freight to the managing owner of a ship, and wishes to remain behind, the managing owner is not bound to return the freight. Likewise if any passenger or other person or merchant shall have freighted goods to the managing owner of a ship, and when they shall have come to land, or at another place, shall wish to sell them, and the goods are not worth the freight, every one must pay his freight, whether or not the goods be worth enough to satisfy it. And if the merchant has other goods which are better, these better goods are not to suffer for the inferior goods. And so the freight is paid to the managing owners of the ships or vessels. And for this reason this chapter was made, that the merchants might not be able to deceive one another, nor to borrow upon what is not worth the money, but only on the principal goods.

Chapter lxxviii. Of the obligations of the passenger.

This is what the passenger, and every person who sails on board a ship, ought to do towards the managing owner of the ship. He is bound to aid and to guard and to defend the ship, and not to abandon it until the end of the voyage, except with the consent of the managing owner of the ship. And for this reason this chapter was made, for many managing owners of ships take on board mechanics and men-at-arms as passengers, and charge a lower rate of freight than they would have done, if they had known that they would leave the ship, and many merchants would not sail in the vessel except that they know that men-at-arms will go with it. Fur-

[1] *provisions*] vianda de meniar is mentioned in chap. xxx. as what the passenger was entitled to bring on board.

d'armes hi van. Encara, son tenguts los pelegrins e tots los altres qui en la nau iran de esser e star al consell, e a totes costumes que seran meses ne stablides en la nau.

Capitol lxxix. De que es tengut patro a mariner.

Ara[1] facam compte, que un senyor de nau acorda un mariner, sia avol o bo, o que sapia, o que no sapia lo seu loguer li ha a pagar, empero en aquesta forma, que si l'mariner li promet que ell sera calafat o mestre d'aixa o notxer, e lo senyor de la nau lo haura pres per aquella fianca, que no n'haura altre levat per fianca de aquell; si aquell no sab res, no li deu donar lo senyor de la nau o del leny sino axi com coneguen lo notxer e l'escriva per sagrament que deu haver.

Capitol lxxx. De gitar mariner de nau.

Encara[2] sapiats, que l'senyor de la nau no deu gitar mariner de la nau fins qui l'viatge haia fet, si no per tres coses, la primera per ladronici, e l'altra per rasa, e l'altra sino fa lo comandament del notxer. Empero, lo notxer no li deu comandar cosa que no li haia de comandar; e no s'deu gitar per una volta, entro a cinch vegades. E si no fa puix lo comandament del notxer, ell lo n'deu gitar, o home qui tenga lo loch del comandament en la nau; mas tu atten be en aquell mariner qui la comanderia o l'altre si ho sap fer. Encara, per altra cosa lo pot gitar de la nau axi metex, co es, si s'perjurara de sagrament que faca, perco, car los mercaders no y hauran pas fianca.

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[1] *Ara*] Esp. 124, chapter lxxxvii. commences here with the Rubric "De mariner que sera acordat, "sia avol o bo."

[2] *Encara*] MS. Esp. 124, chapter lxxxviii. commences here with the Rubric "Que lo senyor ne pot gitar "mariner de nau, sino per tres "raons."

ther, the passengers and all other persons who shall go in the ship are bound to be present and to abide by the counsel and all the rules which shall be laid down and established on board the ship.

Chapter lxxix. What are the obligations of the managing owner towards the mariner.

Here let us suppose that the managing owner of a ship agrees with a mariner, be he bad or good, skilful or unskilful, he has to pay him his wages, nevertheless under this condition, that if the mariner has represented himself to be a caulker or a carpenter or a mate, and the managing owner has hired him on that reliance, if the mariner knows nothing, the managing owner of the ship or vessel is not bound to give him anything beyond what the mate and the ship's clerk adjudge upon their oath that he ought to have.

Chapter lxxx. Of the dismissal of a mariner from the ship.

Further you should know that the managing owner of a ship ought not to dismiss a mariner from the ship until the voyage is concluded except for three things, in the first place for robbery, in the second place for quarrelling, and in the third place if he does not obey the orders of the mate. The mate, however, ought not to command him to do any thing which is not within his command, and the mariner ought not to be dismissed upon the first occasion of disobedience, but only upon the fifth occasion. And if afterwards he does not comply with the orders of the mate, the managing owner or the person who holds the place of command on board the ship ought to dismiss him. But it is to be well understood by you, in the case of that mariner, that the commander or other officer should know how to do it. Further he may dismiss the mariner as well for another thing, namely, if he breaks an oath which he has taken, for in this case the merchant will have no confidence in him.[1]

[1] The punishment of the mariner for various other offences is discussed in chapters cxxi., cxxii., and cxxiii.

Capitol lxxxi. Mariner no s'pot gitar per altre de menos loguer.

Encara[1] es tengut lo senyor de la nau al mariner, que si lo mariner s'es acordat ab lo senyor de la nau per gran loguer, e lo senyor de la nau ne trobava altre per menor loguer, no l'pot gitar de la nau que no y vage, sol que en la ma ho hagen convengut lo un al altre; que axi be deu esser tengut com si era scrit en cartolari.

Capitol lxxxii. Patro ne pot gitar mariner per parent.

Encara,[2] es tengut lo senyor de la nau al mariner, que si lo mariner s'es acordat ab lo senyor de la nau, no l'ne pot gitar per parent ne per altre hom, puisque sia scrib en lo cartolari o que sia data palmada, jat sia, no sia recollit en la nau: e si gitar lo n'vol, haurali a pagar son loguer axi be com si havia fet son servey en tot lo viatge. Encara, es tengut lo senyor de la nau que si fins a tres jorns haura lavoral; e l'pren malaltia, li deu pagar la meytat del loguer: e si no pot entrar en la nau, deu lo jaquir, si los mariners conexen que no pusca anar; e si es en loch strany ha li donar lo senyor de la nau la meytat de son loguer, haia o no; e si no l'ha, que le manleu, que mester es que l'mariner l'aia; e si lo senyor mor, lor marmessors del senyor deven aco attendre.

Capitol lxxxiii. De mariner

Encara,[3] es tengut lo senyor de nau al mariner, que si malalt es lo mariner, e mor en la nau, que deu esser

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[1] *Encara*] Esp. 124, chapter lxxxix. begins here with the Rubric "Que senyor de nau haja acordat per gran loguer."

[2] *Encara*] Esp. 124, chapter xc. begins here with the Rubric "Que senyor de nau no pot gitar mariner de nau per parent."

[3] *Encara*] Esp. 124, chapter xc. is continued to "prohismes ho do."

Chapter lxxxi. A mariner may not be dismissed in order that another may be taken in his place at lower wages.

Further, the managing owner of the ship is bound to the mariner, if the mariner has agreed with the managing owner of the ship for a high rate of wages, and the managing owner of the ship shall find another mariner at a lower rate of wages, he cannot dismiss him from the ship so that he shall not sail in it, after he has once agreed and shaken hands upon it, for he is bound to observe such an agreement, as if it were entered in the ship's register.

Chapter lxxxii. A managing owner may not dismiss a mariner in order to take in his place a relative of his own.

Further, the managing owner of the ship is bound to the mariner, that if the mariner has agreed with the managing owner of the ship, the latter cannot dismiss the mariner to make place for a relative or another man after his name has been entered in the ship's register, or after they have shaken hands, whether or not he has been received on board ship, and if he wishes to dismiss him he must pay him his wages precisely as if he had completed all his services during the voyage. Further, the managing owner is bound, if the mariner has worked for three days and is taken ill, to pay him half his wages, and if he cannot embark in the ship, he ought to dismiss him, if the mariner judges that he cannot go; and if he is in a strange place, the managing owner of the ship has to give him half his wages, whether or not he has money enough to pay them, and if he have not money enough, he must borrow it, for it is incumbent that the mariner should have his wages; and if the managing owner dies, his executors ought to discharge this obligation.

Chapter lxxxiii. Of the mariner

Further, the managing owner is bound to the mariner, that if the mariner falls sick[1] and dies in the vessel, he

[1] *falls sick*] Provision for such a case is made in article ix. of the Rolls of Oleron. The Ordinance of James I. of Aragon of A.D. 1258, art. xx. makes very full provision for the ease of a mariner falling sick or dying in the serviee of the ship, and the Ordinance of Peter of Aragon of A.D. 1340, art. vii., is equally careful on the subject.

qui mor en nau.

pagat de tot son loguer; e si y a ha algun parent seu, a aquell sien dades les coses de aquell, e si aquell qui mort sera ho ha dit o no dit, als infants o a la muller sia dat, si ab ell stava ella com lo marit era viu. E si la muller no li era leal o no stava ab ell com parti[1] de sa terra, o si li sera fuyta despuys que l'marit ne sera partit, lo senyor de la nau ab l'escriva, ab consentement de la cort, als parents pus prohismes ho do.

Capitol lxxxiv. De mariner acordat, qui mor abans o apres de feta vela.

Mariner[2] qui sera acordat en viatge, e per voluntat de Deu mor, ans que la nau haia feta vela, deu haver lo quart del loguer, e sia assignat e donat els hereus. Encara, si morra apres que haura feta vela e abans que sia la on la nau fara port, la meytat del loguer deu esser del mort e que sia dat a sos hereus. E si havia rebut tot lo loguer ans que moris, tot deu esser seu, e donat a sos hereus; e senyor de nau o de leny no y pot res contrastar, ne res demanar.

Capitol lxxxv. De mariner qui va a mesos.

Si lo[3] mariner s'es acordat a mesos e mor, si pagat e donat als seus hereus, per co que haura servit.

Capitol lxxxvi. De patro e mariner sobre fet de portades.

Encara,[4] es tengut lo senyor de la nau de pagar son loguer al mariner la on les mercaderies paguen lo nolit. E si lo mariner es a sa vianda meteixa, es li tengut de dir, si tornara al viatge que haura fet o no, a

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[1] *com parti*] This is the reading of the editions of 1494 and 1502, but Esp. 124 has com ell parti."

[2] *Mariner*] Esp. 124, chapter xci. commences here with the Rubric "De mariner qui sia acordat per "viatge e mor."

[3] *Si lo*] Esp. 124, chapter xcii. commences here with the Rubric "De mariner qui sia acordat a "mesos, e mor."

[4] *Encara*] Esp. 124, chapter xciii. commences here with the Rubric "De pagar loguer als mariners "la on lo rebra." The word nolit is inserted in the table of contents after "rebra."

ought to be paid all his wages, and if he has on board any relative, the effects of the deceased should be given up to him, and, whether the deceased has said so or not, shall be handed over to his children or his wife, if they were living with him whilst he was alive. And if his wife was not loyal to him, or was not living with him when he was last on shore, or shall have run away after his departure, the managing owner of the ship with the ship's clerk, with the consent of the courts, shall give them to his nearest relatives. who dies on board ship.

The mariner who shall be engaged for the voyage and shall die by the will of God before the ship has sailed, ought to have a quarter of his wages, which should be assigned and given to his heirs. Further, if he shall die after the vessel has set sail, and before she arrives at her port of destination, the half of his wages shall belong to the deceased, and shall be given to his heirs; and if he shall have received all his wages before he dies, the whole ought to belong to him and be given to his heirs, and the managing owner of the ship cannot dispute anything, nor claim anything back. Chapter lxxxiv. Of the mariner engaged, who dies before or after the ship has sailed.

If the mariner is engaged by the month and dies, his heirs should be paid for all the time which he has served. Chapter lxxxv. Of the mariner who serves by the month.

Further, the managing owner is bound to pay to the mariner his wages at the place where the merchandise pays freight. And if the mariner finds his own provisions, the managing owner of the ship is bound to say, within eight days, if he will return upon the voyage or Chapter lxxxvi. Of the obligation of the managing owner to

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[1] *for the voyage*] The Consulate treats of six modes of hiring mariners: (1) for the voyage at a lump sum, ch. lxxxiv.; (2) for so much a month, ch. lxxxv.; (3) for so much a mile of distance, ch. cxv.; (4) at the discretion of the managing owner, ch. clxxxi.; (5) for a share of the freight, ch. ccii.; (6) for the right to load goods on his own account, ch. lxxxv.

cap de vuyt jorns. Encara, es tengut lo senyorde la nau al mariner, que si lo mariner met ses portades, que les pot metre en loch qualsevulla, sol que no sia stibat; e que les portades dils mariners, co es entendre, no meten en git. Empero, les portades deven esser d'aytant com lo preu del loguer de l. besans en avall comprades, co es a entendre que si havia c. livres de loguer, que no n'pagaria de les l. e de les l. en sus pagaria; o si ha xl. o xxx. o xx. besans, e havia tant com haver, de l. avall no paga lo git ne averies. E pot les metre aquelles portades en qual loch se vulla; e si s'banyen o s'affolien lo senyor de la nau no li es tengut. E lo mariner es tengut que les meta que l'escriva ho sapia, e que sia scrit; e si no es scrit deu les totes perdre. E no deu dir sino d'aco que seran; e si diu d'als, e que fos provat que no fos allo que haura dit, tot ho deu perdre, e deu esser de la senyoria on seran, e lo senyor de la nau deu ne haver lo terc.

Capitol lxxxvii. Declaracio del damunt dit capitol.

Segons[1] que en lo capitol desus dit diu, portades de mariners no pagan ne deven pagar en git; mas gens no demostra ne declara com deu esser en entes ne com no. E per la rao desusdita los bons homens qui primer anaren per lo mon, en aquesta manera ho volgueren esclarir e declararen ho axi, que si algun mariner comprava les portades del seu propi, axi es a entendre, que ell no haia encara rebut lo seu loguer;

[1] *Segons*] Esp. 124, chapter xciv. begins here with the Rubric "Ca-
" pitol de portades de mariners."

not. Further the managing owner of the ship is bound to the mariner, if the mariner embarks his venture, that the mariner may place it in whatever place he chooses, provided the cargo is not stowed, and the mariner's venture does not contribute to jetison.[1] Further, the mariner's venture ought to be of the value of fifty besants below his wages, as for instance, if his wages amount to one hundred besants, he shall not pay for the first fifty, but shall pay for the second fifty, and if he have forty or thirty or twenty besants of goods, and has as much as he ought to have, he does not pay jetison or average upon a sum below fifty besants. And he may place his venture in any part of the ship which he chooses,[2] and if the goods are wetted or rotted, the managing owner of the ship is not responsible. And the mariner is bound, when he puts his venture on board, to let the ship's clerk know that he may enter it in his register, and if it is not entered he ought to lose it all. And he ought not to declare the goods until they are put on board ; and if he declare anything else, and it can be proved that what he has said is not the fact, he ought to lose everything, and the goods ought to be forfeited to the authorities of the place where they are, and the managing owner ought to have a third.

the mariner who serves for the carriage of his venture

According to what has been said in the preceding chapter, the mariners' ventures do not pay nor ought to pay jetison, but it has not been shown or declared how this ought to be understood, and how not ; and for the reason above said the wise men who first voyaged about the world have wished to make it clear, and have declared that if any mariner purchased his venture with his own money, that is to say, when he has not received his wages, if a case of misadventure happen to the ship

Chapter lxxxvii. Explanation of the preceding chapter

[1] *jetison*] This is subject to the provisions in the next following chapter.

[2] *he chooses*] subject to the stowage of the vessel not having been completed.

si cas di ventura vendra a la nau o al leny on ell era e encara hi haura meses les portades, axi com desus es dit, e seran comprades axi com desus es dit, los dits mariners son tenguts de metre en lo git que fet sera, per sou e per livra, segons que les portades valran o hauran costat, aco es a entendre, segons que git sera stat fet. Empero, si lo senyor de la nau o del leny hauria o haura feta gracia que volgues haver prestat o pagat als dits mariners, ans que en lo viatge entrassen, lo loguer que ells haver deven per aquell viatge on seran acordats e deven anar, los dits mariners no son tenguts de metre en lo git que fet sera en aytant com la meytat de aquell loguer sera. Empero, si les dites portades costaren mes que la meytat del loguer no sera, los mariners son tenguts pagar en aquell git qui fet sera per tot aytant com aquell mes sera, que les portades costaran o valran mes que la meytat del loguer que ells pres hauran. E si per ventura lo senyor de la nau o del leny no l's fara la gracia que desus es dita, e los dits mariners compraran les portades desus dites, axi com desus es dit, ells son tenguts de metre en lo git qui fet sera, tot en axi com desus es dit. Empero, qualque hora quant que quant lo senyor de la nau o leny dara o pagara lo loguer als dits mariners, los dits mariners no son tenguts de lurs portades en aytant com la meytat del loguer los abastara, que seran stades comprades. E per les raons desusdites fon fet aquest capitol.

Capitol lxxxviii. Des portades de mariners.

Senyor [1] de nau deu levar al mariner les sues portades, les quals li haura promeses de levar, e lo mariner deu les metre ans que la nau haia tot son ple. E si la nau ha tot son carrech e ell les hi vol metre, lo senyor no li es tengut de levarles; mas si lo mariner les hi vol

[1] *Senyor*] Esp. 124, chapter xcv. commences here with the Rubric "Que senyor de nau deu levar portades de mariners."

or the vessel where it may be, and where the venture has been put on board as above said, and has been purchased as above said, the said mariner is bound to include it in the jetison, which shall be made by shillings and pounds, according to the value or cost of the venture. Nevertheless, if the managing owner of the ship or the vessel has or shall have done a favour to the mariners of lending them or paying them, before they have commenced the voyage, the wages which they ought to have for that voyage which they have agreed to and which they ought to make, the said mariners are not bound to include in the jetison, which shall be made, more than the half of what those wages shall be. Nevertheless, if the said ventures cost more than what the half of the wages may amount to, the mariners are bound to pay in that jetison, which may be made, for that greater amount, which the ventures have cost or are worth beyond the half of the wages which they have received. And if by chance the managing owner of the ship or vessel shall not have done the favour above mentioned, and the mariners have purchased the ventures above mentioned, as above said, they are bound to contribute to the jetison in the manner above said. Nevertheless, at whatever hour and whensoever the managing owner of the ship or vessel shall give or pay wages to the mariners, the said mariners are not bound to pay of the ventures, which shall have been so purchased, more than the half of that to which their wages shall amount. And for the reasons above said this chapter was made.

Chapter lxxxviii. Of the ventures of the mariners.

A master of a ship ought to take on board for the mariner his venture, which he has promised to take on board, and the mariner ought to put it on board before the ship has loaded her full cargo. And if the ship has taken on board all her cargo, and the mariner wishes to put his venture on board, the managing owner is not bound to take it on board: but if the mariner wishes to put it on board before the ship has taken on board her

metre ans que la nau haia son plc e que l'senyor li u vet, lo senyor es tengut de donar aytant al mariner com haura de nolit, de aytanta roba com lo mariner deu metre per les portades; e axi lo mariner les deu metre.

Capitol lxxxix. Des portades nolieides.

Mariner[1] no pot ne deu nolieiar les sues portades a mercader ne a mariner qui sia de la nau tengut ne nolieiat. E si ho fa, lo senyor de la nau pot pendre lo nolit, que l'mercader havia empres ab lo mariner per rao d'aquelles portades.

Capitol xc. De assenyalar roba en nau.

Mariner[2] ne mercader ne altre hom no deu fer senyal en bala; ne en altra haver, pus que carregat es en nau. E si ho fa, lo senyor de la nau ho pot tot pendre, e ell deu perdre tot co que senyalara.

Capitol xci. Compartiment de mariners.

Encara[3] es tengut lo senyor de la nau als mariners quant hauran stibada la nau d'aco que l's deu pagar, e si es leny la meytat: e deu los donar a comprar lurs portades sis jorns. E deu venir a mar, lo un jorn lo terc, e l'altre lo terc dels mariners, e los altres deven fer lo servici que s'fa en nau.

Capitol xcii. Del carregar de la roba dels mariners.

Encara,[4] es tengut lo senyor de la nau que l'mariner pot carregar e descarregar les sues portades ab la barca de la nau; e devenli ajudar los altres mariners.

[1] *Mariner*] Esp. 124, chapter xcvi. begins here with the Rubric "Que mariner no pot ne deu no-" liejar les sues portades."

[2] *Mariner*] Esp. 124, chapter xcvii. begins here with the Rubric "De senyal affer en bala ne en far-" sell."

[3] *Encara*] Esp. 124, chapter xcviii. begins here with the Rubric "Que lo senyor de la nau es tengut" als mariners que quant aura sti-" bada la nau,"

[4] *Encara*] Esp. 124, chapter xcix. begins here with the Rubric "Mariner pot carregar les sues" portades"

full cargo, and the managing owner forbids it, the managing owner is bound to pay to the mariner as much as he would have of freight for so much goods as the mariner has a right to put on board as his venture, and thereupon the mariner has no right to put any goods on board.

Chapter lxxxix. Of ventures let on freight.

The mariner cannot and ought not to let his right of loading goods to a merchant,[1] nor to a mariner of the vessel, who is bound not to load a venture. And if he does so the managing owner may take the freight, which the merchant has agreed to pay to the mariner in consideration of his right to load a venture.

Chapter xc. Of marking goods on board.

No mariner, nor merchant, nor other person ought to put any mark upon a bale or other effects after it has been laden in the vessel. And if he does so, the managing owner may take it all, and the loader ought to lose all that he shall have marked.

Chapter xci. Of the distribution of the mariners.

Further, the managing owner of a ship is bound to pay to the mariners when they have stowed the cargo in the ship, what is due to them for so doing, and if it is a small vessel the half, and he ought to allow them six days, to purchase their ventures. And one third [2] of them ought to come one day and another third another day to the sea, and the rest ought to do the service which is requisite on board the ship.

Chapter xcii. Of loading the goods of the mariners.

Further, the managing owner of the ship is bound to allow the mariner to load and unload his venture with the ship's boat, and the other mariners ought to assist him.

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[1] *a merchant*] A different rule was sanctioned by art. xviii. of the Rolls of Oleron, as well as by rubr. lii. of the maritime Statute of Ancona (A.D. 1397).

[2] *one third*] A similar provision, requiring a third of the crew to be in turns in charge of the ship when afloat is laid down in the ancient Statute of Marseilles, l. iv. ch. xvii. "ad minus tercia pars ipsorum ma-" rinariorum stet et jaceat qualibet " nocte in eadem nave extra buc-" eam portus Massilie."

Capitol xciii. Com se deu pagar loguer a mariners.

Encara,[1] es tengut senyor de nau a mariners, que del nolit que li sera pagat, ell deu pagar als dits mariners; e si lo nolit no y basta, ell deu manlevar; e si no troba a manlevar, que la nau sia venuda e que s'paguen los mariners ans que hom, qui hi sia prestador ne altre hom; car lo mariner, si no y havia sino un clau de que s'pogues pagar, se deu pagar; sol empero que la dita nau no n'sia anada en terra aquell viatge que haura comencat. E si lo senyor de la nau havia ab amor manlevat en algun viatge lo loguer dels mariners, fos que l'loguer multiplicas a conquist, pus altre viatge que hagues comencat la nau se rompia, lo loguer del primer viatge se deu pagar en fora lo conquist, de aytant com la nau se restaurara; e si no s'restaurava sino sol un agut, sia del loguer a pagar del mariner. E no y pot res dir altre hom, prestador ni altre, que los mariners deven esser pagats, sol que res hi troben, pus que hauran axi fet.

Capitol xciv. On e com e de quina moneda deven esser pagats los mariners.

Tot[2] senyor de nau o de leny es tengut de pagar lo loguer als mariners la on ell reb lo nolit, segons que en lo capital desusdit es contengut: mas es axi a entendre, que no y haia alguna convinenca que l's mariners haien ab lo senyor de la nau o del leny que no l'sia tengut de pagar tro que ells sien tornats en aquell loch hon hauran comencat e levat lo lur viatge. E si aquesta convinenca es entre ells empresa, los ma-

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[1] *Encara*] Esp. 124, chapter c. begins here with the Rubric "Senyor de nau deu pagar als mareyners del nolit que a ell sera pagat."

[2] *Tot*] Esp. 124, chapter ci. begins here with the Rubric "Que senyor de nau es tengut de pagar lo loguer als mariners."

Chapter xciii. How the wages should be paid to the mariners.

Further, the managing owner of the ship is bound to the mariners that he shall pay them from the freight which he has received; and if the freight is not sufficient, he ought to borrow, and if he cannot obtain money on loan, the ship ought to be sold, and the mariners ought to be paid, before any lenders of money or other person; for the mariner ought to be paid, if there is only one nail in the ship to pay him, provided only that the said ship has not gone ashore on the voyage which she has commenced. And if the managing owner of the ship from friendship has borrowed in any voyage the wages of the mariners, in order that the wages may multiply by the profit made with them, and afterwards on the second voyage which the ship has commenced, she goes to pieces, the wages of the first voyage ought to be paid without any profit from as much of the ship as shall be preserved, and if there shall only be preserved a single bolt, it ought to be employed to pay the wages of the mariner. And no person can object, lender or other person, that the mariners[1] ought to be paid as long as any thing can be found to pay them, in consideration of what they have done.

Chapter xciv. Where and when and with what money the mariners ought to be paid.

Every managing owner of a ship or vessel is bound to pay the wages of the mariners there where he receives the freight, according to what is contained in the preceding chapter.[2] But it is to be understood that no agreement has been entered into by the mariners with the managing owner of the ship or vessel, that he shall not be obliged to pay them, until they have returned to the place where they commenced and undertook the voyage. And if such an agreement has been entered into between them, the mariners cannot and ought not

[1] *the mariners*] The same principle is maintained in chapters xiii. and xviii., and likewise in chapter cxlviii.

[2] *the preceding chapter*] Chapter lxxxvi. is probably alluded to.

riners no poden ne deven demanar lur loguer tro que ells sien tornats en aquell loch on ells feren la convinenca ab lo senyor de la nau o del leny; si donchs lo senyor de la nau no l's en volia fer alguna gracia. Mas, lo senyor de la nau deu pagar los mariners encontinent que ells seran tornats en aquell loch on la convinenca sera empresa entre ells, e aco deu fer sens tot lagui e sens tot contrast. E si alguns d'aquells mariners sostrendran algun dan o alguna messio per rao del seu loguer a cobrar; lo senyor de la nau li es tengut de tot aquell dan e de tota aquella messio que aquell mariner haura sostenguda per culpa, com lo senyor de la nau no li haura volgut pagar lo seu loguer. E si entre lo senyor de la nau e los mariners no haura convinenca ne spera empresa alguna, lo senyor de la nau los es tengut de pagar los lurs loguers, los quals lo senyor de la nau e los mariners se hauran empres, encontinent que l'senyor de la nau rebut haura lo nolit e de aquella moneda meteixa que l'senyor de la nau rebra dels mercaders. E si per ventura los mercaders seran trafegadors, o la roba que ells hauran portada no valra lo nolit que l's mercaders deven donar al senyor de la nau, e los dits mercaders jaquiran la roba per lo nolit, valga la roba lo nolit o no valga, mester es que los dits mariners hajen los lurs loguers si la dita nau se n'sabia vendre, encara que s'degues donar per aquell preu que l's mariners deven haver pur lurs loguers. Ne prestadors ne alguna altra persona no y pot res dir ne contrastar per neguna rao; que mester es que l's mariners haien lurs loguers en aquell loch on lo senyor de la nau haura promes de pagarlos, si donchs los dits mariners no vol-

to claim their wages until they have returned to the place, where they have made the agreement with the managing owner of the ship or vessel, unless the managing owner of the ship wishes to do them a favour. But the managing owner of the ship ought to pay the mariners immediately after they have returned to that place where the agreement was made with them, and this he ought to do without any delay or any dispute. And if any of those mariners shall sustain any loss or any expense in recovering his wages, the managing owner of the ship is responsible for all that loss and expense, which that mariner shall sustain from his fault, because the managing owner of the ship has not been ready to pay him his wages. And if there be no covenant made nor delay agreed to between the managing owner of the ship and the mariners, the managing owner of the ship is bound to pay them the wages, which the managing owner of the ship and the mariners agreed to, immediately that the managing owner of the ship has received the freight, and from the very money which the managing owner of the ship has received from the merchants. And if the merchants by chance should be tricksters, and the goods which they have put on board are not worth the freight, which the merchants ought to pay to the managing owner of the ship, and the said merchants abandon the goods for the freight,[1] whether the goods be worth the freight or not, it is incumbent that the mariners should have their wages, even if the said ship should have to be sold; and further if she should be given away for a price, which only earns their wages, neither the creditors of the ship nor any other person can object or oppose the sale for any reason whatever; for it is proper that the mariners should have their wages in the place, where the managing owner shall have promised to pay them, unless the mariners are willing to do a favour to the

[1] *for the freight*] This is further discussed in chapter ccxxx.

ran fer gracia al senyor de la nau, que l'vullen sperar tro que ell sia en loch on trobe consell de moneda, on ells sien pagats de lur loguer. E fon fet perco aquest capitol, que tot senyor de nau deu guardar com nolieara ne com no, a qui ne a qui no, ne quina roba ne quina no; perco, car haia lo nolit o no l'haia, mester es que l's mariners sien pagats de lurs loguers.

Capitol xcv. De loguer de mariners en cas que la nau se ven a sota ma.

Encara,[1] es tengut lo senyor de la nau: que si ell es penyorat de senyoria o d'altre hom, e los mercaders e lo senyor faran vendre la nau a sota ma, e puix la retendra a sos ops e fer l'a comprar a altre, perco que la senyoria no o conega o per altra cosa, lo mariner no deu perdre son loguer, pus que al senyor romanga la nau e lo nolit o lo nolieig, que l'senyor no pot gitar lo mariner si no l'paga. Empero, lo mariner ha a metre lo terc de son loguer per les avaries que s'seran fetes: encara mes, de la altra moneda que haura levat loguer, deu metre, axi com los mercaders per sou e per livra, salvo empero, que l'senyor de la nau vulla exivernar, que l'mercader no li pot res dir que a fer ho ha. E si lo senyor exiverna, qui se n'poria tornar o espera lo nolit, entretant al senyor de la nau ne ve empatxament que es penyorat que ha a vendre la nau axi com desus es dit, lo senyor ha a pagar lo mariner de tot e lo mariner no ha res a metre del loguer en avaries. E per co fon fet aquest capitol; que lo mariner no pot res fer sino axi com lo senyor de la nau vol; que ell pert tots jorns son temps pus exiverna, e

[1] *Encara*] Esp. 124, chapter cii. here begins with the Rubric "Senyor "de nau que sia penyorat."

managing owner of the ship, and are willing to wait until he shall be in a place where he can obtain the aid of money, wherewith they shall be paid their wages. And this chapter was made in order that every managing owner of a ship ought to be on his guard, whether he should accept freight or not, and from whom or not, and for what goods or not, for this reason that whether he is paid his freight or not, it is proper that the mariners should be paid their wages.

Chapter xcv. Of the wages of the mariners in cases where the ship is sold.

Further, the managing owner of the ship is bound, if it is sequestered by the local authorities or by some one else, and the merchants and the managing owner cause the ship to be sold privately, and afterwards retain it for their own interest, and make another person buy it in order that the local authorities may not know it, or for some other reason, the mariner ought not to lose his wages, since the managing owner retains the ship and the freight, or the power to accept freight; for the managing owner may not dismiss the mariner without paying him. However, the mariner must contribute a third of his wages for the average expenses which shall be incurred; still further, of the other money, from which he has received profit, he ought to contribute equally with the merchants by shillings and pounds, saving however when the managing owner of the ship is desirous to winter out, which the merchant can object to his doing. And if the managing owner of the ship winters out, when he can return, or waits for freight and meanwhile an embargo is laid upon the managing owner of the ship, and it is sequestered, and he has to sell the ship as above stated, the managing owner has to pay the mariner the whole, and the mariner has to contribute nothing of his wages to the average expenses. And for this reason this chapter was made, inasmuch as the mariner can do nothing but what the managing owner of the ship wishes; and since he loses his time all the

no li deu hom res crexer de son loguer, e ell met sa persona e sos vestiments a consumament, e lo senyor esta en esperanca e ha affermat son viatge, e sta en esperanca de guanyar; tot lo loguer li deu pagar sens contesa e sens avaries. Salvant empero, que l'senyor no hagues dit e convengut per pati e per acort, que l's degues crexer lurs loguers, e que l's en degues pagar per la spera que l's mariners fessen. E si y ha neguna convinenca, que l'mariners consenten per lur plena voluntat, lo senyor no l's n'es tengut sino aytant com si ells eren cominals; la nau, e lo loguer fa lo un al altre de totes coses multiplicament la nau ab lo loguers. Mas, si no y ha neguna convinenca, tot en axi deu pagar com desus es dit. Encara, es tengut lo senyor de la nau al mariner de pagar per ell, axi com en moltes parts fan avaries, qui paga un diner o una malla en les comunes, car lo senyor de la nau ho deu pagar.

Capitol xcvi. Patro deu fermar dret per los mariners.

Encara,[1] deu esser tengut lo senyor de la nau al mariner, de fermar dret per ell aytant com son loguer valega si no l'ha pres, e d'aytant com faca compte que valega la roba que haura en la nau; e que li deu ajudar de son poder, salvant que per ell no s'met en barala ne en perdicio del seu, ne dels promens que sien en la nau.

Capitol xcvii. Loguer de mariner com se deu esmercar.

Encara,[2] es tengut lo senyor del leny al mariner de esmercar sos diners, com l'aura pagat, la on conexera lo senyor de la nau que faca a fer; salvant que l'sen-

[1] *Encara*] Esp. 124, chapter ciii. here commences with the Rubric "Senyor de nau es tengut de fermar "dret per sos mariners."

[2] *Encara*] Esp. 124, chapter civ. here commences with the Rubric "Senyor de nau es tengut de es-"mersar sos diners al mariner."

days whilst he winters out, and no one is obliged to increase his wages, and he wastes his person and his clothing, and the managing owner stays in the hope of making gain, he ought to be paid all his wages without dispute and without deduction for average expenses. Saving however, that the managing owner has not said or agreed by compact or accord that he should increase his wages, and that he ought to pay him for the delay which the mariner undergoes. And if there be an agreement, to which the mariners consent of their own free will, the managing owner is not liable to them, except for as much as they would be entitled to as partners; the ship and the wages contribute the one to the other in all things, multiplying the ship with the wages. But if there be no agreement, the managing owner ought to pay every thing as has been above stated. Further, the managing owner is responsible to the mariner to pay for him any average dues, which are levied in many communes, of a penny or of a farthing as the case may be, for the managing owner ought to pay all outgoings.

Chapter xcvi. The managing owner ought to be surety for the mariner.

Further, the managing owner of the ship is bound to the mariner to be surety for him to the amount of his wages, if he has not received them, and for as much as the goods may be calculated to be worth which the mariner has on board the ship, and he ought to aid him to the utmost of his power, saving, however, that he is not to mix himself up in his quarrels, nor to risk the lives of himself or of the honest men [1] on board the ship.

Chapter xcvii. How the wages of the mariner should be invested.

Further, the managing owner of the vessel is bound to the mariner to invest his wages, as soon as he has paid them, in the manner which the managing owner of the ship may judge to be advisable, saving however that the managing owner is not to incur any loss. And if the

[1] *honest men*] The term "promens" may mean here the "prudhommes" or "proceres" appointed under the Ordinance of king James I. of Aragon, to which reference is made in the Introduction.

yor no n'haia damnatge. E si lo senyor de la nau es en vila, sia luny o prop, que l'mariner vaia per esmercar son loguer, lo senyor li es tengut de donar a menjar en la nau dos jorns, e no pus, si no s'vol.

Capitol xcviii. De mariners qui pledeien ab lo patro.

Encara,[1] que tot senyor de nau o de leny sia tengut de donar a menjar als mariners estant en lo viatge, si ab ell pledeiaran.

Capitol xcix. Declaracio del precedent capitol.

Segons[2] que en lo capitol ja desus es contengut, que mariners qui pledeiaran ab lo senyor de la nau o leny, que lo senyor de aquella nau o de aquell leny los es tengut que l's do a menjar, mentre que ab ell pledeiaran; mas no demostra com, ne com no, per qual rao. En axi, perco, com en lo capitol desusdit no esclarex, ne poria tornar gran dan als senyors de les naus o dels lenys, e per rao desusdita, los bons homens qui aquest stabliment e costumes faeren, veren e conegueren que gran dan se n'poguera seguir; e perco sobre alguns capitols que no son clars, ells faeren esmenes, perco que dan ne treball no se n'pusca seguir. E sobre lo capitol desusdit dien e declaren, que los senyors de les naus o dels lenys son tenguts de donar a menjar als mariners qui ab ells pledeiaran, co es a saber, per casos sabuts. Lo primers cas es; se lo senyor de la nau o del leny no dara vianda a sos mariners suficient axi com ia es acostumat, e en un capitol ja desus es dit esclarit e certificat. Lo segon cas es; si ell no attendra les convinences que ab ells empendra lo dia que ab ell se accorden. Lo terc cas es; si ell se girara en algun loch on isca de son viatge, si ab ells no se n'ave o no l's ho havia fet entenent com ab ell se acordaren. Lo quart cas es; si ell volra cambiar viatge sens voluntat d'ells e de lur sabuda. Encara mes, per tot cas qui just sia, que no l's attena tot co que promes los

[1] *Encara*] Esp. 124, chapter cv. here commences with the Rubric "Senyor de nau es tengut de dar "a menjar a mariners, si ab eyl "pleideiaran."

[2] *Segons*] Esp. 124, chapter cvi. here commences with the Rubric "Esmena que senyor de nau es "tengut de dar a menjar als ma- "riners."

managing owner be in a town, be it far or near, where the mariner may go to invest his wages, the managing owner is bound to supply him with food for two days on board his ship, and not more, if he does not choose.

Chapter xcviii. Of mariners who sue the managing owner.

Further, every managing owner of a ship or vessel is bound to find food for his mariners during the voyage, if they should sue him.

Chapter xcix. Explanation of the preceding chapter.

According to what is contained in the preceding chapter, when mariners sue the managing owner of a ship or vessel, the managing owner of that ship or vessel is bound to supply them with food, whilst they sue him, but it does not state when and when not, nor for what reasons. Accordingly, since it is not clear in the above chapter, great harm may result to the managing owners of ships and vessels; and for that reason, the wise men who settled the above rule and custom, saw and judged that great harm may result, and accordingly they made amendments to several chapters which are not clear, so in order that no harm nor dispute may arise. And with regard to the above chapter they have said and declared, that the managing owners of ships or vessels are bound to give food to the mariners who may sue them, that is to say, in certain cases. The first case is, if the managing owner of a ship or vessel does not supply food to the mariners, sufficient according to what has been accustomed, and as has been made clear and certified in a preceding chapter. The second case is, if he does not observe the agreement which he has made with them on the day when he engaged himself to them. The third case is, if he shall deviate from his course into any place, respecting which there was no understanding with them at the time, when he engaged himself to them. The fourth is, if he wishes to change his voyage without their consent and without their knowledge. Further, in every just case, as for instance, if he does not fulfil all which he has promised to them, when he engaged him-

haura com ab ell se acordaren. Per aytals coses com desus son dites lo senyor de la nau ab qui ells seran, los es tengut que l's do a menjar, si ab ell ne hauran a pledeiar. Empero, lo cambiament del viatge es axi a entendre que l'senyor de la nau o del leny fos en loch on trobas mariners, si aquells qui ab ell serien no volien anar, si ell los ne volia forcar. Empero, si ell havia cambiat viatge per algunes condicions o per empatx de senyoria, que ell no gosas anar descarregar en aquell loch hon devia descarregar e empres havia ab aquells mercaders qui carregaren, los mariners hi son tenguts de anar. Empero, ex axi a entendre, que segons que l'senyor de la nau se millorara del nolit per aquell cambiament de viatge, que per aquella forma sia tengut ell de millorar los mariners de lurs loguers. E per les raons desusdites feren aquesta esmena e aquest declarament los antichs qui primerament anaren per lo mon. Perque ? perco, com gran dan e gran mal fora e seria, que qualque temps o qualque hora o en qualque loch que la nau o leny prengues terra, per quasevulla rao que la y prengues, que los mariners poguessen metre en plet lo senyor de la nau o del leny, ab lo qual ells serien, sens justa rao : perco, car a les vegades hi ha mariners, que sols que ells poguessen fer lo lur delit e complir la lur voluntat, ells no serien en res, si lo senyor de la nau o del leny ab qui ells serien hi consumaven sa nau o son leny, que abans los plauria. Perque molt mal hom va per lo mon, que es dolent e desesperat com veu algun altre profitar e millorar; perco, com ell volria, que axi com ell es malestruch e dolent, que axi tots los altres ho fossen ; e aquella manera aytal es manera de avol hom. Encara mes, car lo qui es avol hom, no volria ell trovar null temps algu millor de si metex, per neguna

self to them. For such matters as above said, the managing owner of the ship to which they belong is bound to provide them with food, if they have to sue him. Nevertheless the change of voyage is to be understood, when the managing owner of a ship or vessel is in a place where mariners are to be found, and when the mariners of his ship do not wish to go with him, and he desires to constrain them. Nevertheless, if he has to change his voyage for certain conditions, or from some impediment of the local authorities, when he does not dare to go to discharge his cargo in that place where he ought to discharge it, and has agreed to do so with those merchants, who shipped it, the mariners are bound to go with him. Nevertheless it is to be understood that, according as the managing owner of the ship shall augment the freight for this change of voyage, he is bound in proportion to increase the wages of the mariners. And for this reason, the men of olden time who first voyaged throughout the world made this amendment, and this explanation. Wherefore? Because there would be great loss and great mischief, if at any time and at any hour and at any place, where the ship or vessel should go into port for whatsoever reason it might do so, the mariners might bring a suit against the managing owner of the ship or vessel, to which they belong, without any just reason; because there are at times mariners who, provided that they can only do mischief and accomplish their design, would not at all care, if the managing owner of the ship or vessel to which they belong, wore out his ship or vessel, or rather it would even please them. For there are many men in the world who are grieved and disappointed when they see any one else make profit or derive advantage, because they would wish that, as they are miserable and afflicted, all other men should be so likewise, and such habits are the habits of vile men. Further he, who is a vile man, would not desire at any time to find a person better

manera, en lo mon. E per aquesta manera los nostres antichs antecessors volgueren e declararen los casos e les raons perque los senyors de les naus e dels lenys fossen tenguts de donar a menjar als dits mariners, qui ab ells dits senyors pledeiaran ; perco, que d'aqui avant algun avol hom no pogues fer consumar a algun altre, d'aco que hauria. E per les raons desusdites fon fet aquest capitol. E si mariner algu metra lo senyor de la nau o del leny en algun plet sens justa rao o just cas, ell es tengut a aquell senyor de aquella nau o d'aquell leny ab qui ell sera acordat, e qui ell haura mes en algun plet, de retre e de donar tots dans e damnatges e tots destrichs que ell ne sostendra, o ell ne haura sostengut; perco, car no justament ell haura fet pledeiar lo dit senyor de la nau o del leny, e fet consumar lo seu. E si ell no ha de que li pusca pagar ne retre ne donar co del seu, ell deu esser pres e menat e mes en poder de la senyoria, e estar tant entro que ell haia satisfet aquells dans o damnatges, los quals aquell senyor d'aquella nau o d'aquell leny, ab qui ell sera acordat, haura sostenguts per culpa d'ell, pusque axi com no devia l'aura mes en plet e en damnatge. Perque tot home se deu guardar de fer algun dan a altre sens rao, per co que sobre si meteix no li puga tornar aquell damnatge, que ell cuydava fer a altre sens justa rao, per co es justa cosa que sobra si meteix torn.

Capitol c. De les viandes, que deu donar lo patro als mariners.

Encara,[1] es tengut lo senyor de la nau o del leny, que sia cubert, que deu donar a menjar a tots los mariners tres jorns de la semana carn, co es a saber en lo diumenge, en lo dimarts, e en lo dijous ; e en los altres jorns de la semana cuynat, e quascun vespre de quada dia lur companatge ; e axi metex tres vegades

[1] *Encara*] Esp. 124, chapter cvii. commences here with the Rubric "De quina vianda es tengut nau ho leny a mariners acubert."

than himself in the world. And in this manner our predecessors of olden time wished to declare the cases and the reasons, when and why the managing owners of the ships or vessels were bound to give food to the said mariners, who should sue the said managing owners, in order that henceforward no vile man should oblige another man to consume his substance. And for the reasons above said this chapter was made. And if any mariner sue any managing owner of a ship or vessel on any plea without just reason and just cause, he is responsible to the managing owner of that ship or that vessel, to whom he has engaged himself, and whom he has sued on any plea, to reimburse and to make good all losses and damages and all prejudices which he shall sustain or shall have sustained; for he will have caused the said managing owner of the ship or vessel to plead without just reason, and made him waste property. And if he have not wherewithal to pay or reimburse or give of his own, he ought to be taken and delivered over to and placed in the hands of the local authorities, and be detained so long until he shall have satisfied those losses and damages, which the managing owner of that ship or that vessel, to whom he shall have engaged himself, shall have sustained from his fault, since he has implicated him, when he ought not to have so done, and caused him damages. For every man ought to take care not to cause damage to another without reason, inasmuch as that damage which he contemplated inflicting upon another may recoil upon himself, and inasmuch as it is just that the damage should so recoil upon him.

Chapter c. Of the food, which the managing owner ought to supply to the mariners.

Further, the managing owner of a ship or vessel, which is decked, ought to give to eat to the mariners on three days a week flesh-meat, that is to say on Sundays, Tuesdays, and Thursdays, and on the other days of the week porridge, and every evening of every day some accompaniment with bread, and also on the same

per quascun mati los deu fer donar vi; e axi meteix los ne deu fer donar quascun vespre. E lo companatge deu esser tal, com se segueix, co es, formatge, o ceba, o sardina, o altre pex. Encara, lo senyor es tengut de donar vi entro que l'vi valega tres besants e mig. E si troba atzebib o encara figues, ell ne deu fer vi; e si no troba atzebib, ne figues, o que li costas tot mes de xxx. millaresos la millera feta; lo senyor de la nau o del leny no l's es tengut de donar vi. Encara mes, es tengut lo senyor de la nau o del leny de doblar la reccio als dits mariners a fest anyal. Encara, deu haver servicials qui adoben de menjar als mariners.

Capitol ci. Patro no es tengut de donar menjar a mariner, qui no dorm en nau.

Senyor[1] de nau o del leny no es tengut de donar a menjar als mariners, pus que no jaguen en la nau o en lo leny.

Capitol cii. Mariner no es tengut de anar en loch perillos.

Encara,[2] senyor de nau no deu trametre mariner en loch reguardos; si l'mariner no y vol anar, lo senyor no l'ne pot forcar.

Capitol ciii. De prestar mariner a altra nau.

Encara,[3] senyor de nau no pot prestar mariner a altra nau o a altre leny sens voluntat del mariner, salvant empero que l'senyor de la nau hagues ops un mestre o un mariner qui sapia fer cosa que haia ops a la nau, que aquells no sapien fer qui en aquella nau o en aquell leny seran; e aquell mariner hi deu anar, mas no pas en terra, si donchs no era a servey de aquella nau en que aquell seria, diu, salvo que aquell

[1] *Senyor*] Esp. 124, chapter cviii. commences here with the Rubric "Senyor de nau no es tengut de "dar a menjar a mariners pus no "jaguen en nau."

[2] *Encara*] Esp. 124, chapter cix. commences here with the Rubric "Senyor di nau no deu trametra "mariner en loch reguardos."

[3] *Encara*] Esp. 124, chapter cx. commences here with the Rubric "Senyor de nau no pot prestar "mariner a altra nau."

three days in the morning he ought to give them wine, and also he ought to give them the same quantity of wine every evening. And the accompaniment[1] of the bread ought to be such as follows, that is, cheese or onions or sardines or some other fish. Further, the managing owner is bound to give them wine, whilst it is below the price of three besants and a half. And if he finds them prunes or figs, he ought not to find them wine, and if he does not find them prunes or figs, or that the cost of them by the thousand is more than thirty millaresos, the managing owner of the ship or vessel is not bound to supply wine. Further, the managing owner of the ship or vessel is bound to double the ration of the mariners upon the solemn feast days. Further, he ought to have servants to prepare the food for the mariners.

Chapter ci. The managing owner of a ship is not bound to supply food to the mariner, who does not sleep on board.

The managing owner of a ship or vessel is not bound to give to eat to the mariners, when they do not sleep on board the ship or vessel.

Chapter cii. A mariner is not bound to go to a dangerous place.

Further, the managing owner of a ship ought not to carry the mariner into any dangerous place: if the mariner is unwilling to go there, the managing owner may not force him.

Chapter ciii. Of lending a mariner to another ship.

Further, a managing owner of a ship cannot lend a mariner to another ship, or another vessel, without the consent of the mariner, saving always when the managing owner of the ship has need of a carpenter, or of a mariner who knows how to do something which is needed in the ship, which those who are in that ship or vessel do not know how to do, and that mariner ought to go there, but not to go on shore, unless it shall be in the service of the ship in which he shall be, that is to say, saving that the mariner shall not carry

[1] *accompaniment*] The same word "companatge" occurs in chapter ccvi. in the same sense. See also ch. xxxii. and lxviii.

mariner no bastaixas ne que levas faix ne algun carrech a son coll ne res que ell fer no degues.

Capitol civ. Del que aura patro dels mercaders, per descarregar.

Senyor[1] de nau es tengut al mariner, que tot semblant pati com fara al mercader, si deu descarregar en algun loch, en axi com haura dels mercaders, axi u deu donar als mariners.

Capitol cv. Fet lo viatge, mariner es libertat.

Si senyor[2] de nau pren altre viatge la on la nau haura descarregat, e l'mariner no y vol anar, lo senyor no l'pot forcar; salvant que sia en loch que trobe mariners: mas si no n'trobava, ha los a fer juncta al viatge en axi com sia conegut per lo senyor e per lo notxer e per lo scriva de junyir, segons que l'hom valra mes en aquell que en l' altre. Mas, lo senyor no n'pot minuar a nengu de son loguer. E si un hom valra mes que l'senyor no s'cuydara al comencament, deu lo millorar; car molt hom se vol exir de una terra, perco car no y es conegut, perco e que n'isca, fa gran mercat de sa persona.

Capitol cvi. Com la nau se ven en terra de Crestians.

Si senyor[3] de nau vendra la nau, o altre qui la pusca vendre, a hom strany qui no hagues part; tot lo loguer deu pagar als mariners, e son scapols. E si los mariners son en loch que no y vullen navegar, lo senyor, o aquell qui la nau haura venuda, es tengut de fer lurs ops a ells entro que sien tornats la on los levaren.

Capitol cvii. Com la nau

Si nau[4] o leny si vendra en terra de Sarrains, lo senyor del leny deu donar leny e vianda als mariners,

[1] *Senyor*] Esp. 124, chapter cxi. commences here with the Rubric "Pati de senyor de nau a mercaders de que l's es tengut a mariners."

[2] *Si senyor*] Esp. 124, chapter cxii. begins here with the Rubric "Si senyor de nau pren altra viatge e lo mariner no y vol anar, no l'pot forsar."

[3] *Si senyor*] Esp. 124, chapter cxiii. begins here with the Rubric "De nau o leyn qui s'vena en terra de Crestians."

[4] *Si nau*] Esp. 124, chapter cxiv. begins here with the Rubric "De nau o leyn qui s'vena en terra de Serreyns."

nor load bundles or other burdens on his neck, nor shall do anything which it is not becoming for him to do.

Chapter civ. Of what the managing owner shall have from the merchants for discharging.

A managing owner of a ship is bound to the mariner, that according to the compact which he shall make with the merchants, if he ought to discharge goods in any place, in proportion as he shall receive from the merchants, so shall he give to the mariners.

Chapter cv. When the voyage is completed, the mariner is at liberty.

If a managing owner of a ship undertake any voyage in the place where the ship has discharged, and the mariner does not wish to go, the managing owner may not force him, saving always that he is in a place where he can find mariners; but if he has not found them, he has to increase his wages for the voyage according to the judgment of the managing owner of the ship and of the mate and of the ship's clerk, according as one man may be worth more than another. But the managing owner may not diminish the wages of any one. And if a man is worth more than the managing owner believed at the commencement, he ought to increase his wages; for many men desire to leave a country, because they are not sufficiently appreciated, and in order to get away from it, sell their personal services at a cheap price.

Chapter cvi. When the ship is sold in a country of Christians.

If the managing owner of the ship, or another who has authority to sell it, shall sell the ship to a stranger, who owns no part of it, he ought to pay to the mariners all their wages, and they are then released. And if the mariners are in a place where they do not wish to take service, the managing owner, or the person who shall have sold the ship, is bound to furnish supplies to them, until they have returned to the place, where he took them on board.

Chapter cvii. When the

If a ship or vessel shall be sold in a country of Saracens, the managing owner of the vessel is bound

se ven en terra de Sarrains.

entro que sien en terra de Crestians, on puguen haver recobre.

Capitol cviii. De mariner que s'tema.

Si per ventura[1] sera acordat mariner en forma de cartolari, qui digues en lo acordament, que y hagues empreniment segons que l'senyor de la nau ho hauria fet scrivre a enteniment del mariner, que ell fos dubtant en algun loch, e que l'dit mariner no y gosas anar, lo senyor de la nau li deu donar la meytat de son loguer, e li deu donar vianda tro que sie en loch de recobre. Empero, si es acordat sens tal empreniment, lo mariner es tengut de anar la on lo senyor de la nau sera tengut de anar ab los mercaders.

Capitol cix. De mariner quant es acordat, com es obligat.

Lo mariner[2] es tengut a senyor de nau o de leny, que pusque sera acordat ab lo senyor e donara palmada, es mester que l'mariner vaia ab ell axi be com si n'havia feta carta de notari. E lo mariner, d'aquell jorn avant que sera acordat ab lo senyor de la nau, no pot anar en alguna part sens voluntat del senyor. E deu lo mariner demanar paraula al senyor si res ha a fer fora de la vila on sera, e deu haver, si es en loch fora vila, recollida la roba al terc jorn, si la nau es en loch estrany. Encora, es tengut lo mariner al senyor que li haia a jurar de esser fet e leal axi com

[1] *Si per ventura*] Esp. 124, chapter cxv. begins here with the Rubric "De mariner qui sia acordat " en forma de cartolari."

[2] *Lo mariner*] Esp. 124, chapter cxvi. begins here with the Rubric " Mariner es tengut que pus sera " acordat e donada palmada.

to find a vessel and food for the mariners, until they shall arrive in a Christian land, where they may find supplies. ship is sold in a country of Saracens.

Chapter cviii. Of a mariner who is afraid

If by chance a mariner shall have engaged himself formally by an entry in the ship's register, and it is stated in the engagement which he has undertaken in accordance with what the managing owner of the ship has caused to be written as to the intention of the mariner, that he is afraid of a certain place, and does not dare to go there, the managing owner of the ship ought to give him half his wages, and ought to provide him with food until he shall be in a place where he can have supplies. Nevertheless if the engagement has been made without any such undertaking, the mariner is bound to go wherever the master of the ship is bound to go with the merchants.

Chapter cix. Of a mariner, who has engaged himself, what are his obligations

The mariner is under obligation to the managing owner of a ship or vessel that, when he has once engaged himself to him, and has shaken hands [1] with him, he must go with him precisely as if he had made an agreement in writing before a notary. And the mariner, from the day on which he has engaged himself, cannot go anywhere without the consent of the managing owner. And the mariner ought to ask permission of the managing owner, if he has anything to do outside the town where he may be, and ought to have his goods collected, if he is in a place outside the town, on the third day, if the ship is in a strange place. Besides, the mariner is under obligation to the managing owner of the ship that he should take an oath of fidelity and

[1] *shaken hands*] The custom of pledging each other by shaking hands on the conclusion of a bargain prevailed amongst the Romans, and is frequently referred to in the plays of Plautus and Terence. It was very general in the middle ages. Ducange in his Glossary explains the custom under the words "Manu firma." See chapters xliv. and cxi.

en aquell capitol es scrit, que demanen los mercaders al senyor.

Capitol cx. A quins servicis es obligat lo mariner.

Encara,[1] es tengut mariner al senyor de la nau; que ell no s'pot partir d'ell ne de la nau per alguna cosa sino per tres; per esser senyor de nau o leny, o per esser notxer, o per convinenca. E si mor lo senyor o aquell qui sera logat, e seran sobre lo leny los biens d'aquell, qui y seran deven pagar los mariners al terme. Encara es tengut mariner en totes coses que pertangan a la nau, a anar a bosch, a serrar, e a lenyar, e a fer exarcia, e a forn, e a barqueiar ab los barquers, e a stibar, e a desestibar, e tota hora que l'notxer li u comanda anar a aygua, e a levar en nau totes companyes dels mercaders, e a donar lats a la nau, e anar a tota exarcia, e a portar lenya, e ajudar a fer major a nau, e a totes coses que sien a millorament de aquella es tengut de fer, e co que pertanga a la nau, mentre sera tengut a la nau.

Capitol cxi. Raons per

Mariner[2] qui sera acordat en nau o en leny, pus que sera scrit en capbreu o haura dada palmada al senyor

[1] *Encara*] Esp. 124, chapter cxvii. commences here with the Rubric "Mariner no s'pot partir de "nau sino per tres raons."

[2] *Mariner*] Esp. 124, chapter cxviii. commences here with the Rubric "Mariner no s'pot s'trer d'anar al viatge."

loyalty to him according to what is written in the chapter[1] which treats of what the merchants may claim from the managing owner of a ship.

Chapter cx. To what services the mariner is obliged.

Further, the mariner is bound to the managing owner of the ship so that he cannot leave him or the ship for any cause except three; (namely,) to be managing owner of another ship, or to be mate, or by agreement. And if the managing owner or the person who has hired the mariner dies, and there shall be goods belonging to him on board the ship, the goods which are there ought to pay the mariner within a reasonable term. Further, the mariner is bound in all things which pertain to the ship, to go to the forest and fetch wood, to saw and to make planks, to make spars and ropes, to bake, to man the boat with the boatswain, to stow goods and to unstow them; and at every hour when the mate shall order him to go and fetch water, and to put on board all the victuals[2] of the merchants, to heave the vessel over,[3] to go and fetch spars and ropes, to carry planks, and to aid to repair the vessel, and he is bound to do everything to improve the condition of the ship and of all which belongs to the ship whilst he shall be engaged to the ship.

Chapter cxi. Reasons

A mariner who has engaged himself to a ship or vessel, after his name shall be written in the muster roll[4]

[1] *the chapter*] The chapter here intended is probably chapter xvi., which treats of the oath to be taken by the mariners.

[2] *victuals*] The word "companyes" is evidently used here in a different sense from the word "attendants." See chapters xxxii. and lxviii.

[3] *heave the vessel over*] See chapter xvii. The phrase "donar lats" is translated in both places by M. Pardessus "mettre le navire a la bande." It occurs again in chapter cxliii.

[4] *muster roll*] The term "capbreu" was the Catalan equivalent for the register book of the ship, which is termed "caput breve" in the Ordinance of king James of Aragon of 1258, art. ii., and "capibrevium" in art. xx. The same book seems to be designated "cartolari" in an ordinance respecting consuls in Sicily of A.D. 1341. Either word appears to be used indiscriminately in the Consulate.

que s'pot abstraure lo mariner apres que sera acordat.

o al scriva, no s'pot abstraure de anar al viatge, si donchs per aquestes coses no u fahia; co es, per muller a pendre, o per anar en romiatge e que n'hagues fet vot ans que al viatge se acordas, o si es mariner de proa per esser panes, o per esser notxer, o si es notxer, per esser senyor; e tot aco que sia menys de frau.

Capitol cxii. De mariner qui fugira.

Mariner[1] qui sera acordat en nau o en leny e fugira, pres que sera acordat e haura jurat servir, es degut que la nau ne logue altre en loch d'aquell. E si costa mes de loguer, deu restituir lo mes que l'altro haura rebut, ab que sia semblant de aquell mariner en marinatge.

Capitol cxiii. Esmena del precedent.

Segons[2] que diu en lo capitol desusdit; mariner, qui fugira apres qui sera acordat, es tengut si aconseguit es, si lo senyor de la nau ne ha a logar altre per la falla que aquell li haura feta, e costa mes que l'senyor de la nau no dava a aquell, que li es tengut de retre e de donar tot co que costara mes que ell no havia, a aquell senyor di aquella nau o di aquell leny ab qui ell sera acordat. Mas, es en axi a entendre, que aquell mariner fugira en aquell loch meteix on sera acordat; mas no diu ne declara, si algun mariner sera acordat en alguna nau o en algun leny, e la nau o lo leny sera

[1] *Mariner*] Esp. 124, chapter cxix. commences here with the Rubric "Mariner qui fugira de nau o " de leyn."

[2] *Segons*] Esp. 124, chapter cxx. commences here with a similar Rubric "Mariner qui fugira de nau o " de leyn."

or he shall have shaken hands with the managing owner or the ship's clerk, cannot withdraw himself from going on the voyage,[1] unless he does so from (one of) these reasons, (that is to say,) to take a wife, or to go on a pilgrimage, and to fulfil a vow which he has made before he engaged himself for the voyage; or if he is a mariner before the mast, to become a mariner of the poop, or to become a mate; or if he be a mate, to become a managing owner; provided always that there is no fraud.[2]

why the mariner may withdraw after he has engaged himself.

If a mariner who has been enrolled on board a ship or vessel shall desert, after he has engaged himself and has sworn to serve, it is right that the ship should have another in his place; and if he costs more wages,[3] the deserter ought to pay the surplus which the other has received, provided he be like him in seamanship.

Chapter cxii. Of the mariner who shall desert.

According to what is said in the preceding chapter, in the case of a mariner who deserts after he has engaged himself, if he is overtaken, and the managing owner of the ship has to hire another to fill the vacancy which he has caused, and the other costs more than the managing owner has given to him, the mariner is bound to reimburse and to give all, which the other has cost more than he had, to the managing owner of that ship or that vessel to whom he had engaged himself. But it is to be understood, that the mariner deserts in the very place where he engaged himself; but it has not been said or declared, if any mariner shall have engaged himself in any ship or any vessel, and the ship or vessel has set out with the mariners

Chapter cxiii. Amendment of the preceding

[1] *going on the voyage*] This is a different case from that of leaving the ship during the voyage, which is discussed in chap. cx.

[2] *no fraud*] Chapter cclii. deals further with the subject of the right of the mariner to renounce his engagement before the vessel sails.

[3] *more wages*] The same provision occurs in the ancient Statute of Marseilles, l. iv. ch. xv.

partit ab los mariners ensemps de aquell loch on los acorda, e sera en algun loch altre estrany, si algun mariner li fugira, de que li es tengut e de que no. E perco que en lo capitol desusdit no u esclareix, los antichs qui primerament anaren per lo mon volgueren ho esclarir e fer aquesta esmena, per co que algun contrast o algun mal no se n'pusca crexer, e dien axi; que tot mariner qui fugira a alguna nau o algun leny en loch estrany, si es aconseguit o trobat en algun loch, ell es tengut de pagar e restituir tot dan e tot destrich e tot interes que aquell senyor de aquella nau o leny haura sostengut, ne haura a sostenir per rao del fugir que ell haura fet; e sie n'cregut per sa simpla paraula. E si lo dit mariner no ha de que u pusca fer, ne esmenar, deu esser pres e mes en poder de la senyoria, e star tant pres tro haia satisfet lo dan e lo destrich e l'interes que aquell senyor de aquella nau o leny dira ne haura sostengut; e sie n'cregut per sa simpla paraula, axi com desus es dit. E per l'esclariment desusdit fon feta aquesta esmena.

Capitol cxiv. De remolcar altra nau.

Encara,[1] mariner es tengut que vaia a remolcar nau o leny, per entrar en port, si lo notxer li a comanda, salvant que no sien lurs enemichs.

Capitol cxv. De roba trobada en mar, e de

Encara,[2] es tengut mariner, que si troba alguna cosa pusque sera tengut a la nau, que la nau ne ha tres parts, e los mariner una, sien molts mariners o pochs; e si son en mar e veen res que fos mercaderia, ells hi

[1] *Encara*] Esp. 124, chapter xxi. commenees here with the Rubric "Mariner es tengut que ajut a re- "molcar nau o leyn."

[2] *Encara*] Esp. 124, chapter cxxii. commences here with the Rubric "Mariner es tengut que si "troba alcuna cosa."

from the place where they were engaged, and shall be in a strange place, if a mariner deserts, what he is bound to do, and what not. And because what is said is not clear in the preceding chapter, the men of olden time, who first voyaged about the world, have wished to declare and make this amendment, in order that no dispute nor mischief should arise, and they have thus laid it down: that every mariner who deserts any ship or vessel, if he is overtaken and found in any place, is bound to pay and reimburse [1] every loss and every prejudice and every interest which the managing owner of that ship or vessel has sustained or shall have to sustain by reason of his desertion, and the managing owner shall be believed upon his simple word. And if the said mariner has not wherewithal to do this and to make compensation, he ought to be taken and given into the custody of the local authorities, and remain in custody [2] until he has satisfied the loss and the prejudice and the interest which the managing owner of that ship or vessel shall state that he has sustained; and the latter shall be believed on his simple word, as above said. And this amendment has been made to clear up what precedes.

Chapter cxiv. Of towing another vessel.

Further, a mariner is bound to go and tow a ship or vessel in order that it may enter a port, if the mate orders him to do so, saving always that it is not an enemy's vessel.

Chapter cxv. Of goods found on the sea, and of the

Further, if a mariner finds anything after he is engaged to the ship, the ship shall have three parts and the mariners one part, whether they be many or few; and if they are on the sea, and see anything which is

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[1] *reimburse*] Chapter ccxxiii. deals further with this subject.

[2] *in custody*] The Ordinance of Peter of Aragon of A.D. 1340, art. iv. condemns the deserter to pay a fine of one hundred shillings, or to be imprisoned one hundred days.

mariner qui va per milles.

deven anar, o altra cosa sense mercaderia, sol que l'senyor de la nau los ho comanda; e deven ne haver axi com desus es dit. E perco pren tan gran part lo senyor, com menjan e prenen son loguer. E si algun senyor de leny loga son leny a altre, aquell ho deu pendre que loga lo leny e fa la messio. E si aquell mor ans del terme, que sera sobre leny, les coses a aquell se deven pagar. Encara, es tengut lo mariner a la nau, que si va per rao de millas,[1] que la ha a seguir anant tro al cap del mon. E si per ventura la nau sera tornada alla de on sera partida fet viatge, e que no y sera tornada ab aquella mercaderia, e que haya descarregat en altra part, lo mariner no li es tengut. Mas, si la nau descarregat no ha, lo mariner li es tengut de anar per millas. E perco son fet aquest capitol; car molt senyor de leny o de nau sera endeutat, e no volra tornar en sa terra per malmirent que hi sera, o perco car haura por que no li encanten la nau, e axi tostemps tendria los mariners.

Capitol cxvi. Condicions de patro a mariners.

Lo mariner[2] es tengut, que si hira en viatge, que no deu anar sino la on lo senyor li haura fet entenent al comencament del viatge; e si lo senyor ven la nau, ell deu donar nau al mariner en que se n'torn a fer sos ops. E si leva viatge, com haura anat la on devia

[1] *per rao de millas*] This is the reading of the editions of 1494 and 1562, but MS. Espagnol 124 has "milles."

[2] *Lo mariner*] Esp. 124, chapter cxxiii. commences here with the Rubric "Mariner no es tengut "d'anar, sino la on lo senyor li "aura fet entenent."

merchandise or anything which is not merchandise, they ought to go after it, providing the managing owner of the ship orders them, and they ought to have their share of it, as above said. And the managing owner takes so large a share, since the mariners are fed by him and receive wages. And if the managing owner of a ship lets his vessel to another, he, who has the vessel on hire and furnishes the expenses, ought to have the managing owner's share. And if the latter dies before the term is finished, for which he has the vessel, the value of the goods shall be paid over to his account. Further, the mariner is bound to the ship, if he is engaged by the mile,[1] that he accompany her to the end of the world; and if by chance the ship shall have returned thither whence it set out, the voyage having been finished, and it shall not have returned with the same merchandise, but shall have discharged it in some other part of the world, the mariner is no longer obliged to accompany the ship. But if the ship has not discharged its cargo, the mariner is bound to accompany it by the mile. And for this reason this chapter was made, because many a managing owner of a vessel or ship is in debt, and does not wish to return to his country, as he will be in bad credit, and because he is afraid that they will sell his vessel by auction, and accordingly he would always keep the mariners.

mariner who serves by the mile.

Chapter cxvi. The obligations of the managing owner to the mariners.

The mariner is bound, who is hired for a voyage, not to go anywhere except there where the managing owner has given him to understand at the commencement of the voyage: and if the managing owner sells the ship, he ought to provide the mariner with a ship, in which he may return to transact his own business. And if he has begun his voyage, when he shall have arrived there where he ought to go, and has discharged the

[1] *by the mile*] M. Pardessus observes that this manner of hiring a mariner is not noticed in any law or usage anterior to the Consulate.

anar, e ell haura descarregat o dessorrat, e lo senyor de la nau haura levat viatge, e sera en loch de recobro de mariners, lo mariner no li es tengut, e lo senyor de la nau no lo n'pot forcar. E si la nau no sera en loch de recobro, que no pusca haver mariners, aquells mariners lo deven seguir, e que sien pagats segons l'altre viatge, e per rao de l'altre multiplicant quant leva e quant es l'altre. Aquest capitol fon fet, perco com la nau perdria son viatge, e perco nau ne pot perdre son viatge per mariners. Mas si lo senyor de la nau o del leny met altre hom sobre si, la convinenca no es tenguda de mariner a senyor de nau, pus ell sera desposseit de la senyoria.

Capitol cxvii. Mariner com es tengut de fer lo comandament del senyor o del notxer.

Mariner[1] es tengut de fer tot comandament de senyor de nau ne de leny o del notxer, ab que no sia a servey d'altra nau ne d'altre leny, mas tot servey que pertanga a la nau es tengut de fer.

Capitol cxviii. De mariner qui fara rasa contra son senyor.

Encara,[2] mariner qui fara rasa contra son senyor de nau o de leny, deu perdre la meytat del loguer e la roba que haura en la nau ; e deu esser gitat de la nau. E si leva armes contra son senyor, tots los mariners lo

[1] *Mariner*] Esp. 124, chapter cxxiv. commences here with the Rubric "Mariner es tengut de fer "comendament de nau."

[2] *Encara*] Esp. 124, chapter cxxv. commences here with the Rubric "Mariner qui fara rassa."

cargo or put the ballast on shore, and the managing owner of the ship has undertaken a voyage and is in a place of resort for mariners, the mariner is no longer bound to remain by the vessel, and the managing owner of the ship may not force him to do so. And if the ship shall not be in a place of resort for mariners, so that the managing owner cannot engage others, the mariners are bound to accompany the vessel, and they should be paid for a second voyage, and with regard to the second voyage should be paid by calculating the one in proportion to the other. This chapter was made because the ship would lose the voyage, and because a ship ought not to lose a voyage by reason of the mariners. But if the managing owner of a ship or vessel puts another person in command,[1] the agreement of the mariner with the managing owner is no longer binding, since he is dispossessed of the management.

Chapter cxvii. How the mariner is bound to obey the order of the managing owner or of the mate.

A mariner is bound to perform all the commands[2] of the managing owner of the ship or vessel or of the mate, provided it is not for the service of another vessel,[3] but he is bound to do every service which pertains to the ship.

Chapter cxviii. Of the mariner who makes a quarrel against his managing owner.

Further, a mariner who shall make a quarrel against the managing owner of a ship or vessel ought to lose the half of his wages and the goods which he has in the ship, and he ought to be dismissed from the ship. And if he raises a weapon against the managing owner,

[1] *in command*] The subject of the mariner's obligation to serve under a master substituted in the place of the managing owner is discussed further in chapters cxxvii., cxxviii., and cclii.

[2] *commands*] The mariner's duty of absolute obedience to the managing owner or his substitute was strictly enjoined by the Ordinance of Peter of Aragon of A.D. 1340, art. xi., which directed that in case of disobedience the mariner was to be put in irons and given into the custody of the local authorities, who were to hand him over to the provost of the king.

[3] *another vessel*] This case has been already provided for in chapt. ciii.

deven pendre, e ligar, e metre en preso, e menar lo a la senyoria: e aquells qui pendre no l'volran, deven perdre la roba e l'loguer, que hauran o haver devran per aquell viatge.

Capitol cxix. De mariner qui tocara iradement son senyor.

Encara,[1] mariner qui tocara iradament son senyor es perjur e bara, e deu esser pres en persona e perdre tot quant haura.

Capitol cxx. De mariner com deu comportar son senyor.

Encara,[2] mariner es tengut de acolorar son senyor de nau, si li diu vilania, e si li corre desobre, lo mariner deu fugir fins a proa, a deu se metre de lats de la cadena. E si lo senyor hi passa, ell li deu fugir de la altra part, e si lo senyor lo encalca de l'altra part, pot se n'defendre lo marinèr, levantne testimonis com lo senyor l'a encalcat; que el senyor no deu passar la cadena.

Capitol cxxi. Mariner qui exira en terra.

Encara,[3] mariner es tengut de no exir en terra ne anar sans paraula del notxer o del scriva, salvant lo manament del senyor, que en la nau haia res a fer.

Capitol cxxii. Mariner qui emblara.

Encara,[4] mariner qui emblara roba o exarcia o haver qui sia en la nau, deu perdre son loguer e la roba que haura en la nau: e lo senyor lo pot pendre e metre en un cep, e tenir pres mentre sia en aquell viatge; e puys, si l'vol metre en poder de la senyoria, pot ho fer.

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[1] *Encara*] Esp. 124, chapter cxxvi. commences here with the Rubric "Mariner qui tocara irade- " ment son senyor."

[2] *Encara*] Esp. 124, chapter cxxvii. commences here with the Rubric "Mariner deu acolorar son " senyor."

[3] *Encara*] Esp. 124. This chapter is transposed and follows the two next chapters, and is numbered chapter cxxx. It commences with the Rubric "Mariner no deu exir " ne anar en terra meyns de co- " mendament."

[4] *Encara*] Esp. 124, chapter cxxviii. commences here with the Rubric "Mariner qui emblara " roba."

all the mariners ought to seize him and bind him and put him into prison, and take him before the local authorities, and those who will not seize him ought to lose their goods and the wages, which they will receive or ought to receive for that voyage.

Chapter cxix. Of the mariner who through anger shall strike the managing owner.

Further, a mariner who shall strike his managing owner in anger is perjured and a traitor, and ought to be seized bodily and to forfeit all that he should receive.

Chapter cxx. How the mariner ought to behave himself towards the managing owner.

Further, a mariner is bound to bear with the managing owner of a ship, if he reproaches him, and if he runs to attack him the mariner ought to run away to the bow of the ship and place himself by the side of the chain. And if the managing owner passes the chain, he ought to run away to the other side, and if the managing owner passes to the other side he may defend himself,[1] calling persons to witness how the managing owner has pursued him, for the managing owner ought not to pass the chain.

Chapter cxxi. Of the mariner who shall go ashore.

Further, a mariner is bound not to go on shore[2] without the permission of the mate or of the ship's clerk, excepting by order of the managing owner, when there is nothing to be done on board ship.

Chapter cxxii. Of the mariner who shall steal.

Further, a mariner who shall steal goods or ship's apparel or effects on board ship, ought to lose his wages and the goods which he may have in the ship, and the managing owner of the ship may take him and put him in irons and keep him a prisoner whilst he is on that voyage, and afterwards if he wishes to give him into the custody of the local authorities, he may do so.

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[1] *defend himself*] The mariner's right of self-defence under certain circumstances is recognised in art. xii. of the Rolls of Oleron.

[2] *on shore*] The mariners had greater liberty under art. v. of the Rolls of Oleron. Further provisions on this subject are made in chapters cxxiv., cxxvi, and cxxix.

Capitol cxxiii. Mariner qui gitara vianda acordadament.

Encara,[1] mariner qui gitara vianda o vi, co es, acordadament, deu perdre lo loguer e la roba que haura en la nau, e star a merce del senyor de la nau.

Capitol cxxiv. Pena di mariner que ix de nau sens licencia.

Segons[2] que en un capitol qui desus es dit, mariner no deu exir de nau sens paraula e sens voluntat del senyor de la nau o del notxer o del scriva o de aquell qui romandra en la nau qui haura loch de comandament: e al capitol qui ia desus es dit no esclareix ne certifica, aquell mariner de que es tengut e de que no, qui sens paraula exira de nau o de leny. E perco que entre los senyors de les naus o dels lenys e los mariners qui ab ells seran, e exiran, no pusca haver algun contrast; los nostres antichs antecessors esclarexen aquest capitol de mariners qui sens paraula se n'iran de la nau o del leny, e sens voluntat del senyor o de aquell qui tendra loch de comandament, en axi: mariner qui fara o cometra co que desus es dit, es tengut, que si aquella nau o leny de on per aytal rao com desus es dita exira o sera exit, pendra dan per causa com ell ne sera exit, ell es tengut de esmenar tot aquell dan, que aquella nau o aquell leny haura pres per culpa d'aquell o d'aquells qui axi seran exits. E si aquells mariners no han de que puscan esmenar e retre aquell dan, que aquella nau o aquell leny haura pres per culpa d'ells, a aquell de qui sera, ells deven esser presos e mesos en preso en poder de la senyoria, e star tant tro que ells haien satisfet a aquell de qui aquella nau o aquell leny sera, tot lo dan que per culpa

[1] *Encara*] Esp. 124, chapter cxxix. commences here with the Rubric "Mariner qui gitara vianda "ne vi acordadament."

[2] *Segons*] Esp. 124, chapter cxxxi. commences here with the Rubric "Mariner no deu axir de nau sens "paraula."

Chapter cxxiii. Of the mariner who throws away his food designedly.

Further, a mariner who shall throw away his food or wine, that is designedly, ought to lose his wages and the goods which he shall have in the ship, and be fined at the discretion of the managing owner of the ship.

Chapter cxxiv. The punishment of the mariner, who goes on shore without leave.

According to what has been said in a preceding chapter,[1] a mariner ought not to go out of the ship without the permission and consent of the managing owner or of the ship's clerk, or of him who remains on board and has the place of command, and in the abovesaid chapter it has not been made clear or certain, to what the mariner is liable or not, who goes out of the ship or vessel without permission. In order that there may be no dispute between the managing owners of ships or vessels, and the mariners who belong to them and who shall go ashore, our predecessors of olden time have declared this chapter respecting mariners, who go ashore from the ship or vessel without permission, and without the consent of the managing owner or of him who holds the place of command, to this effect: A mariner who shall do and commit the offence above said, if that ship or vessel, from which for such reason as above said he shall go ashore, sustains damage because he has gone ashore, is bound to make compensation[2] for all the loss which that ship or vessel shall sustain from the fault of him or them who has or have gone ashore. And if those mariners have not wherewithal to make compensation and to restore the loss, which that ship or vessel has sustained from their fault, to him to whom the vessel belongs, they ought to be seized and committed to prison, and be in the custody of the local authorities, and remain there until they have satisfied him to whom the ship or vessel belongs for all the loss, which has been caused by their fault or which has resulted from it.

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[1] *a preceding chapter*] Chapter cxxi.

[2] *compensation*] This is enjoined also by art. v. of the Rolls of Oleron.

d'ells sera fet o que se n'sien avenguts ab ell. E si los dits mariners exiran en terra en alguns lochs, on lo senyor de la nau o del leny sera per recaptar son nolit o per nolieiar sa nau o son leny, o per qualque rao lo senyor de la nau sera en terra: e si per aquell exir que l s'mariners faran en terra, e sens paraula del senyor o d'aquell que ell haura jaquit en son loch hi exiran, si lo senyor de la nau ne perdra nolit o n'sostendra algun dan, aquells mariners li son tenguts de tot aquell nolit a retre, e aquell dan esmenar, que per culpa d'ells haura sostengut o perdut. E si ells no hauran de que retre ne de que puscan esmenar, deu ne esser fet axi com desus es dit. E fon fet perco aquest capitol, car molt mariner cuyda valer tant, que li es semblant que lo senyor de la nau ne l'notxer ne hom qui en la nau sia, no haia ne valega tant com ell; e no li es semblant que res que ell faca pusca tornar a dan; per que tot mariner se deu guardar com exira de nau e com no, perco que la pena que desus es dita no li pusca venir desus.

Capitol cxxv. De mariner, qui s'despulla.

Encara,[1] mariner no s'deu despullar, si no es en port exivernador. E si ho fa, per quascuna vegada deu esser surt en mar ab la veta del morgonal per tres vegades; e de tres vegades avant, deu perdre lo loguer e la roba que ha en la nau.

Capitol cxxvi. Mariner no s'deu partir del leny, pus comenca a carregar.

Encara,[2] mariner es tengut que no s'partesca del leny, pus comenca a carregar en loch perillos, menys de voluntat del senyor o notxer. E si u fa, es tengut de esmenar tot dan que la nau o l'leny sostendra per culpa d'ell.

[1] *Encara*] Esp. 124, chapter cxxxii. commences here with the Rubric "Mariner no s'despull sino " en port exivernador."

[2] *Encara*] Esp. 124, chapter cxxxiii. commences here with the Rubric "Mariner es tengut que no " s'partescha de nau o leyn."

And if those mariners shall go ashore in any place, where the managing owner of the ship or the vessel shall be to receive his freight or to let his ship on freight, or for whatever reason the managing owner shall be on shore, and if from this going ashore of the mariners, which they have done without the permission of the managing owner or of him whom he has left in his place, the managing owner of the ship shall lose any freight or sustain any loss, those mariners are bound to reimburse that freight, and to compensate that loss, which he has respectively lost or sustained. And if they have not wherewithal to reimburse or to compensate him, it ought to be done as aforesaid. And this chapter was made for this reason, for many a mariner believes himself to be of so much value that he imagines that neither the managing owner of the ship nor the mate nor any one else on board is of so much value as himself, and it does not seem to him likely that anything which he shall do can turn to his loss, wherefore every mariner ought to be careful when he should go ashore and when not, in order that the above penalty may not fall upon him.

Chapter cxxv. Of the mariner, who strips himself.

A mariner ought not to undress himself if he is not in a port for wintering. And if he does so, for each time he ought to be plunged into the sea with a rope from the yard arm three times; and after three times offending, he ought to lose his salary and the goods which he has in the ship.

Chapter cxxvi. A mariner cannot leave the ship after she has begun to take in cargo.

Further, a mariner is bound not to depart from the ship, after she has commenced to take in cargo in a perilous place,[1] without the consent of the managing owner or of the mate. And if he does so, he is bound to compensate all the loss which the ship or vessel shall sustain from his fault.

[1] *perilous place*] This obligation for the defence of the ship was enjoined by art. 10 of the Ordinance of Peter of Aragon of 1340.

Capitol cxxvii. De mariner, qui ven ses armes.

Encara,[1] lo mariner no pot vendre ses armes, entro que haia fet lo viatge. E si ho fa, deu estar a merce del senyor de la nau o del leny.

Capitol cxxviii. Mariner no deu traure res de nau sens licencia.

Encara,[2] mariner no pot res traure de nau, si no u mostra al guardia o al scriva o al notxer; e si u fa, deu li esser demanat per ladroniei.

Capitol cxxix. Mariner no deu dormir en terra.

Encara,[3] mariner no deu dormir, sens paraula del senyor de la nau, en terra, e si ho fa, es perjur.

Capitol cxxx. Mariner deu donar exarcia davant nau, e ormeiar.

Encara,[4] mariner es tengut e deu donar exarcia davant la nau e ormeiar, o y sia lo notxer o no y sia. Mas no n'gosa levar que desormeig, si no n'ha comandament.

Capitol cxxxi. De barquer.

Encara,[5] es tengut mariner, si es barquer, de posar tots los homens en terra, e que s'decalc. E si no u fa o no u vol fer, deu pagar tota messio que hom ne faca.

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[1] *Encara*] Esp. 124, chapter cxxxiv. commences here with the Rubric "Mariner no pot vendra " les sues armes."

[2] *Encara*] Esp. 124, chapter cxxxv. commenees here with the Rubric "Mariner no deu res trer de " nau."

[3] *Encara*] Esp. 124, chapter cxxxvi. commences here with the Rubric "Mariner no deu dormir en " terra."

[4] *Encara*] Esp. 124, chapter cxxxvii. commences here with the Rubric "Mariner es tengut de dar " exarcia davant nau."

[5] *Encara*] Esp. 124, chapter cxxxviii. commences here with the Rubric "Mariner es tengut de posar " los homens en terra."

Chapter cxxvii. Of the mariner, who sells his arms.

Further, the mariner may not sell his arms[1] before he has completed the voyage. And if he does so, he ought to be fined at the discretion of the managing owner of the ship or vessel.

Chapter cxxviii. A mariner ought not to take any thing out of the ship without leave.

Further, a mariner cannot take any thing out of a ship, without showing it to the watch or to the ship's clerk or to the mate. And if he does so he ought to be charged with stealing.

Chapter cxxix. A mariner ought not to sleep on shore.

Further, a mariner ought not to sleep[2] on shore without the permission of the managing owner of the ship, and if he so does, he commits perjury.

Chapter cxxx. A mariner ought to pay out cable ahead of the ship, and to moor her.

Further, a mariner is bound to pay out cable ahead of the ship, or to moor her, whether the mate be there or not. But he may not venture to unmoor her, unless he has orders so to do.

Chapter cxxxi. Of the boatswain.

Further, a mariner is bound, if he is in charge of the boat, to put all persons on shore, and to take off his breeches[3] for that purpose. And if he does not do so or is not willing to do so, he ought to pay all the expenses which any person incurs.

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[1] *his arms*] Every mariner was required to bring armour and weapons with him on board the ship by art. viii. of the Ordinance of Peter of Aragon of A.D. 1340, and to be prepared to use them at all times in the service of the ship, under pain of forfeiting his wages. The same obligation is recognised below in chapter cxxxiii.

[2] *to sleep*] The obligation of the mariner under an oath not to sleep on shore without the permission of the mate is recognised in the ancient Statute of Marseilles, lib. iv., ch. xvii.

[3] *his breeches*] It is provided by chapter lxxv. that the watchman was to have the breeches (les calces) of every passenger dying on board. Some kind of loose small-clothes is probably meant by this word, which the boatman in the present case was required to take off in order to carry the passengers on his back ashore through the water.

Capitol cxxxii. Mariner deu anar a moli.

Encara,[1] es tengut mariner, que si lo senyor o l'escriva de la nau lo volra trametre a moli, que y deu anar; e es tengut de fer tots servicis que pertangan a la nau.

Capitol cxxxiii. De les armes de mariner.

Encara,[2] es tengut lo mariner de metre les armes que haura convengudes al senyor de la nau; e si no les hi met, lo senyor los pot comprar sobre son loguer sens voluntat del mariner, e l'escriva deu hi esser.

Capitol cxxxiv. Mariner no deu derenclir la nau.

E los[3] mariners no deven derenclir la nau, part lo temps que han star en aquell viatge; e en axi com la nau o leny guanyara del nolit, e mariners crexer de lurs loguers.

Capitol cxxxv. Mariners deven dessorrar e sorrar, carregar e descarregar.

Mariners[4] son tenguts de dessorrar a de sorrar la on la nau comencara lo viatge, e de stibar la roba e los havers, e descarregar ab la barca o ab barques de la nau o del leny, e puys la on la nau fara port per rao de descarregar l'aver dels mercaders, caxes e lurs armes, e sorrar la nau, e dessorrar, e carregar, e stibar, de qualsque havers sia nolieiat. E si descarregara la dita nau la on les mariners deian esser scapoles, no sien tenguts de descarregar ne dessorrar, mas de la nau a ormeiar a comandament del senyor, e tirar entenes e

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[1] *Encara*] Esp. 124, chapter cxxxix. commences here with the Rubric "Mariner es tengut que si " lo senyor vol trametra a muli, que " y deu anar."

[2] *Encara*] Esp. 124, chapter cxl. commences here with the Rubric " Mariner es tengut de metra les " armes que aura promeses,"

[3] *E los*] Esp. 124, chapter cxli. commences here with the Rubric " Mariner no deu delinquir nau."

[4] *Mariners*] Esp. 124, chapter cxlii. commences here with the Rubric " Mariners son tenguts de " sorrar e de desorrar."

Chapter cxxxii. A mariner ought to go to the mill.

Further, a mariner is bound, if the managing owner or the ship's clerk wishes to send him to the mill,[1] to go there, and he is bound to perform every service which pertains to the ship.

Chapter cxxxiii. Of the arms of the mariner.

Further, the mariner is bound to take on board the arms,[2] which he has agreed to with the master of the ship, and if he does not take them on board, the managing owner may purchase them on account of his wages without the consent of the mariner, and the ship's clerk ought to be present.

Chapter cxxxiv. A mariner ought not to desert the ship.

And the mariners ought not to desert the ship during the time whilst they are engaged in that voyage, and in proportion as the ship or vessel shall earn freight, the wages of the mariners shall be augmented.

Chapter cxxxv. Mariners ought to ballast and unballast, to load and unload the ship.

Mariners are bound to unballast and to ballast a ship where she shall commence her voyage, and to stow the goods[3] and effects, and to discharge them with the boat or boats of the ship or vessel, and in the place where the ship shall go into harbour for the purpose of discharging the goods of the merchants, their chests or their arms, to ballast the ship, and to unballast her, and to load her and to stow her, whatever effects may be taken on freight. And if the ship is unloaded at the place where the mariners ought to be released, they are not bound to unload nor to unballast her, but only to moor the ship by the order of the managing owner and to carry ashore the yards and the rudder, to beach the

[1] *the mill*] The obligation of the mariner to go to the bakehouse is specified in chapter cx., but the mill is there omitted.

[2] *arms*] Under article viii. of the Ordinance of Peter of Aragon of 1340, the wages of the mariner were forfeited, if he did not bring his proper equipment of armour and weapons on board, or did not use them when required in the service of the ship.

[3] *stow the goods*] This chapter should be construed in conjunction with chapters xxix. and cxci.

timons en terra, e fer destre en terra, e en mar; e puys no sien tenguts a nau, fet aquest servey damunt dit.

Capitol cxxxvi. Mariners deven tirar leny.

Encara,[1] es tengut mariner que si l'senyor del leny lo vol traure en terra o en fou, que no se n'deu partir tro que l'leny sia en terra o en fou. E si no l'vol tirar ni metre en fou, que li deu ajudar a ormeiar; e si no u fa, deu pagar tota messio que per culpa d'ell sera feta.

Capitol cxxxvii. De mariner trames per lo senyor, si es pres.

Si algun[2] mariner que l'senyor de la nau tramet en algun loch, ell hi deu anar: e si es pres o n'ha algun damnatge, lo senyor li n'es tengut; e si es pres lo deu rembre; empero, salvant que no l'trameta luny mes de mija milla de la nau, e que sia en loch menys dubtant. E si es pres de cossaris per forca, lo mariner deu haver son loguer, axi be com si havia fet son viatge. Encara es tengut lo mariner de fer tot comandament de tot home que l'senyor de la nau o del leny meta en son loch, si ell roman del viatge.

Capitol cxxxviii. De nau logada a scar, e a que son tenguts los mariners.

Senyor[3] de nau o del leny, si loga a scar a algun hom, aco que haura mostrat al logater, allo li haura a donar per convinent. E si l'logater es trafegador, e los mariners se acorden all ell, e aquell no l's pot pagar, ell

[1] *Encara*] Esp. 124, chapter cxliii. commences here with the Rubric "Mariner es tengut que si "lo senyor vol trer res en fou."

[2] *Si algun*] Esp. 124, chapter cxliv. commences here with the Rubric "Mariner qui sera pres, que "lo senyor l'aja trames en loch."

[3] *Senyor*] Esp. 124, chapter cxlv. commences here with the Rubric "Nau o leny qui s'logara a escar."

vessel and to launch her, and when the above service has been completed, they are no longer bound to the vessel.

Chapter cxxxvi. Mariners ought to beach the vessel.

Further, the mariner is bound, if the managing owner of a vessel wishes it to be drawn up on the beach [1] or on a slip, not to go away before the vessel is drawn up on the beach or on a slip. And if he does not wish to beach the vessel nor to draw it up on a slip, the mariner, ought to assist to moor her, and if he does not do so, he ought to pay all the expenses which may be incurred by his fault.

Chapter cxxxvii. Of a mariner sent by the managing owner, if he is taken prisoner.

Any mariner whom the managing owner of the ship sends to any place, is bound to go there, and if he is taken prisoner or incurs any harm the managing owner is responsible [2] to him. Nevertheless he may not send him further than half a mile from the ship, and only when he is in a country which is not suspected. And if the mariner is taken prisoner by corsairs by violence, he ought to have his wages precisely as if he had made his voyage. Further the mariner is bound to execute all the orders of every person whom the managing owner of the ship or vessel puts in his place, if the managing owner remains behind for the voyage.

Chapter cxxxviii. Of a vessel hired for a lump sum, and to what the mariners are bound.

A master of a ship or vessel, if he lets his vessel for a lump sum to any person, is bound to supply according to the agreement all which he has promised to the hirer. And if the hirer is a trickster, and the mariners engage themselves to the managing owner, and the hirer cannot

[1] *on the beach*] This duty of the mariners was enjoined by art. viii. of the Ordinance of king James of A.D. 1258.

[2] *responsible*] Under art. vi. of the Laws of Oleron, if a mariner sent on shore in the service of the ship was wounded, the ship paid for his treatment.

[3] *in his place*] This is more fully explained in chapter cclii.

n'es tengut: guartse lo senyor del leny a qui l'haura logat. E si lo senyor del leny nolieia lo leny a scar a algun mercader, e lo senyor s'es desexit de la messio, e aquell qui haura nolieiat la fa, en axi es tengut lo mariner a aquell qui l'leny haura nolieiat, propriament com si era senyor; que senyor sera, pus ell dara lo loguer al senyor e als mariners, e fara les messions. E si lo mariner havia alguna convinenca ab lo senyor del leny de altre viatge de anar e de tornar, lo mariner no li n'es tengut. E per co fon fet aquest capitol; car molt bon hom ira per mariner, e sera mercader e honrat hom; e vendra algun hom qui sera vila e haura diners, e lo bon hom no volra navegar ab ell; e per aquesta rao lo senyor del leny s'es desexit del mariner, e lo mariner d'ell, pus haura nolieiat lo leny a son scar. Lo leny com sera nolieiat e scar, tots los homens qui havien a servir al senyor, deven servir al noliejador per aquell cap meteix. E si res se pert per temps, que no u puscan recobrar, lo nolieiador que l'leny haura nolieiat, no li n'es tengut de res, mas qui s'ajudara de aco que en lo leny sera, si pot; e si compra res que ops sia al leny, al cap del viatge ho pot recobrar, sia exarcia o vianda que li sobre; que l'senyor del leny no li es tengut de res a comprar sino allo que mostrat li haura.

Capitol cxxxix. De patro qui promet

Senyor[1] de nau o de leny, qui prometra a mercaders de levar quantitat de roba o quintalades, e no pora, lo

[1] *Senyor*] Esp. 124, chapter cxlvi. begins here with the Rubric "Senyor de nau qui prometra de levar quantitat de roba."

pay, the managing owner is liable;[1] the managing owner must take care to whom he lets his vessel. And if the managing owner of the vessel lets his vessel for a lump sum to any merchant, and the managing owner declines all expenses, and he who has hired the vessel undertakes the expenses, the mariner is accordingly engaged to him who has hired the vessel precisely as if he was the managing owner, for he will be (in substance) the managing owner, since he will pay the wages of the managing owner and of the mariners, and will discharge all the outgoings. And if the mariner has any agreement with the managing owner of the vessel for another voyage to go and return, the mariner is not bound to him. And for this reason this chapter has been made: for many respectable men will go as mariners and will be merchants and honest men, and there will come a man who is a vile person and has money, and the respectable man will not sail with him, and for this reason the managing owner of the vessel is disengaged from the mariner, and the mariner from him, when he lets his vessel for a lump sum. When the vessel is let for a lump sum, all the men who have to serve the managing owner, ought to serve the person who has hired the ship for that very voyage. And if any thing is lost by the weather, so that it cannot be recovered, he who has hired the vessel is not liable for any thing, but he must help himself with what is in the vessel, and if he purchases any thing which may be necessary, he may retain it[2] at the end of the voyage, whether it be ship's apparel or food which remains unconsumed, for the managing owner of the vessel is not bound to provide any thing beyond what he has shown with the vessel.

Chapter cxxxix. Of the managing

A managing owner of a ship or vessel, who shall promise to a merchant to take on board a certain quantity

[1] *liable*] This is further provided for in chapter cxlviii.

[2] *retain it*] Further provisions on this head are made in chap. clxiii.

de levar co que no pora.

senyor de la nau es tengut de donar als mercaders leny qui valega tant o mes que l'seu; e si costa mes de nolit, deu ho ell pagar. E aco es a alt dels mercaders, si u pendran o no; e lo senyor de la nau es mester que s'avenga ab los mercaders de co que promes los haura. E fon fet aquest capitol, car molt senyor de nau fa de paraula la sua nau o leny major lo terc or lo quart que no sera.

Capitol cxl. De allo meteix.

Senyor[1] de nau o de leny qui nolieiara la sua nau als mercaders, e prometra l's de levar mes roba que no pora, lo senyor de la nau es tengut als mercaders, axi com en lo capitol desus es dit; e los mercaders deven abatre del preu que empres hauran ab lo senyor de la nau de la roba que levara, multiplicant a aquella que levar no pora. E fon fet aquest capitol per aquella rao que s'conte en aquell capitol que desus es dit.

Capitol cxli. De roba qui s'gastara sobre cuberta.

Senyor[2] de nau que nolieiara la sua nau a mercaders a scar o a quintalades, si lo senyor de la nau metra o portara roba sobre cuberta, menys de sabuda e de voluntat dels mercaders, si aquella roba, que sobre cuberta sera mesa e portada sens voluntat e sens sabuda dels mercaders, se perdra o s'gastara, jat sia aco que sia scrita en cartolari, los dits mercaders no son tenguts en la roba, que sobre cuberta sera, de fer esmena a aquella

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[1] *Senyor*] Esp. 124, chapter cxlvii. begins here with the Rubric "Sen- "yor de nau qui noliejara la sua "nau a mercaders."

[2] *Senyor*] Esp. 124, chapter cxlviii. begins here with the Rubric "Senyor de nau qui noliejara la "sau nau a escar." The words "o a quintarades e portara roba "sobre cuberta" are added in a more modern hand and in black ink.

of goods or quintals, and cannot do so, is bound to provide for the merchant a vessel, which is worth as much as or more than his own, and if it costs more for freight, he is bound to pay it. And it is at the option of the merchant whether he will accept it or not, and the managing owner of the ship is under the necessity of making an arrangement with the merchant respecting what he has promised him. And this chapter was made because many a managing owner of a ship makes out by words his ship or vessel to be a third or a fourth larger than she really is.

owner, who promises to take on board that which he can not.

Chapter cxl. Of the same subject.

A managing owner of a ship or vessel who shall let on freight his ship to merchants, and shall promise to take on board more goods than he can, is responsible to the merchants according to what has been said in the preceding chapter, and the merchants ought to abate from the sum, which they have agreed to pay to the managing owner of the ship for the goods which he should take on board, in proportion to that which he cannot receive on board. And this chapter was made for the reasons stated in the preceding chapter.

Chapter cxli. Of goods above deck, which shall be spoilt.

If a managing owner freights his ship to merchants for a lump sum or for so many quintals, and if the managing owner shall place or carry goods on the deck [1] without the knowledge or consent of the merchants, if the goods which are placed and carried on deck without the knowledge and consent of the merchants are lost or spoilt, notwithstanding that they are entered in the ship's register, the said merchants are not responsible in respect of the goods, which shall be on the deck, to make com-

[1] *on the deck*] Under the ancient Statute of Marseilles, lib. iv. ch. xx., the owner of a deck load, if it was cast overboard to lighten the ship in bad weather, could receive nothing in the way of contribution, either from the ship or from the cargo.

roba, que per aytal rao sera perduda o gastada. Mas lo senyor de la nau sia tengut de retre, e de donar tota aquella roba que per la rao desusdita sera perduda o gastada, o lo valent de aquella, al mercader de qui sera. E si lo senyor de la nau no haura de que pagar, deuse vendre la nau, que personer ni prestador, ne algun altre, no y poden contrastar ne deven per neguna rao, salvant los mariners per lurs loguers. E si la nau no bastava, e lo senyor de la nau havia bens en altre loch, deven se n'vendre tants en tro que l'mercader sia entegrat; mas los personers no sien tenguts sino tant solament d'aco que la part valra que hauran en la nau. Empero, si el mercader de qui la roba sera, haura dit o empres ab lo senyor de la nau que sol que ell li leu aquella roba, mete la en qualque loch ell se volra, e aco que sia scrit en capbreu o ab testimonis, ab que los testimonis no sien tenguts ne prenguen loguer de la nau (mas lo cartolari deu esser totavia cregut); e si lo senyor de la nau levara la roba sots aquella condicio o empressio, e aquella roba se perdra o s'gastara, ella deu esser perduda a aquell de qui sera, que lo senyor de la nau, ne l's mercaders qui dins la nau seran, no son tenguts de fer alguna esmena a aquell mercader, qui la sua roba haura mesa en la nau per la condicio o empressio que desus es dita. Mas, aquell mercader, es tengut al senyor de la nau de pagar lo nolit que ab ell haura empres, e tots les averies que per aquella roba seran fetes. E aquest capitol fon fet perco, car senyor de nau o de leny no deu levar res sobre cu-

pensation for those which shall be for that reason lost or spoilt. But the managing owner of the ship is bound to replace and to restore all those goods, which for the above reason have been lost or spoilt, or the value of them, to the merchant to whom they shall belong. And if the managing owner of the ship has not wherewithal to pay, he ought to sell the ship, which neither part-owner, nor creditor, nor any body else can object to, nor ought to dispute for any reason, saving the mariners for their wages. And if the ship has not sufficed, and the managing owner of the ship has goods in another place, there ought to be sold so much of them as will indemnify the merchant, but the part-owners are not liable except for as much as the part which they have in the ship shall be worth. Nevertheless, if the merchant, to whom the goods belong, has said or agreed with the managing owner of the ship, that, provided only that he will take on board those goods, he may place them wherever he pleases, and if this is written in the manifest or with witnesses, provided those witnesses are not engaged to the ship or receive wages from it (but the manifest ought to be under all circumstances believed); and if the managing owner of the ship shall take on board those goods under those conditions and agreements, and those goods shall be lost or spoilt, they ought to be lost to him to whom they belong, for neither the managing owner of the ship nor the merchants who are in the ship are bound to make any compensation to that merchant, who has put his goods on board that ship under the condition and agreement above said. But that merchant is bound to the managing owner of the ship to pay the freight which he has agreed to with him, and all the outgoings which have been incurred for the goods. And this chapter was made because the managing owner of a ship or vessel ought not to load anything upon deck, except only the ship's apparel and the

berta, sino tan solament la exarcia e sa companya, qui haia ops a servey e necessari de la nau.

Capitol cxlii. De roba mesa fraudulosament, que deu esser d'ella en cas de git.

Mercader [1] o mercaders qui nolieiaran quantitat de roba a algun senyor de nau o de leny, e aquella quantitat de roba sera nolieiada ab carta o ab testimonis o en forma de cartolari, facam compte que aquella quantitat de roba que nolieiada sera, segons la forma que desus es dita, que sien mil quintars, que axi podem fer compte de mil quintars com de cent o de mes o de menys; lo senyor de la nau li es tengut de levar aquella quantitat de roba que nolieiada haura. E si levar no la pot, es tengut e obligat a aquells mercaders qui nolieiada la hauran tot en axi com en un capitol ja desus dit es e esclarit e certificat. E si l'mercader o los mercaders hauran nolieiat al senyor de la nau o del leny mil quintars, e ells ne metran mil e cinch cents, o mil e dos cents quintars, o mes o menys, e si ab lo senyor de la nau o del leny no u hauran empres, ne en la carta sera contengut, ne en lo cartolari de la nau o del leny sera scrit, e los testimonis no hauran oit

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[1] *Mercader*] Esp. 124, chapter cxlix. begins here with the Rubric "Mercaders qui noliejaren quantitat "de roba." The words "e aquella "anganosament carregan" are added in black ink in a more modern hand.

victuals,[1] of which he may be in want for the service and necessities of the ship.

Chapter cxlii. Of goods put on board fraudulently, what is to be done with them in case of jetison.

If a merchant or merchants shall freight a quantity of goods to any managing owner of a ship or vessel, and if that quantity of goods be freighted in writing or in the presence of witnesses, or formally in the ship's register, let us suppose that the quantity of goods, which shall be freighted formally as above said, shall be a thousand quintals, for we may suppose a thousand quintals equally as a hundred or more or less, the managing owner is bound to take on board the quantity of goods which he has accepted on freight. And if he cannot receive them on board, he is bound and obliged to those merchants, who have freighted the goods, to the extent declared and made clear in the preceding chapter.[2] And if the merchant or the merchants have freighted to the managing owner of the ship or vessel a thousand quintals, and they put on board a thousand and five hundred, or a thousand and two hundred quintals, or more or less, and if to that effect they have not made any agreement with the managing owner of the ship or vessel, nor anything is in writing, nor any entry has been made in the register book[3] of the ship or vessel,

[1] *the victuals*] The word "companya" is here translated by M. Pardessus as the accompaniments of the ship's apparel. "La sua compagnia" is the Italian translation. It is evidently the same word which is used in the Ordinance of king James I. of Aragon, of A.D. 1258, art. xiii. "Ordinamus quod lignum cum duobus coopertis non mittat nec defferat aliquas merces de medio arbore usque ad puppem, nisi tantum barcham suam cum suis apparamentis et companyam suorum mercatorum, et si aliquas merces in dicto loco mittere voluerit, quod hoc faciat cum voluntate suorum mercatorum, et ultra eorum voluntatem non ausus sit mittere aliquas merces in loco superius nominato. In camera vero puppis ipsius ligni defferat suam companyam et suorum mercatorum." "Sa compagnia" would seem to mean here the managing owner's "accompaniments," whether they were victuals or personal baggage.

[2] *preceding chapter*] Chapter xl. is here meant.

[3] *register*] The provisions of this chapter are supplemental to chap. lv.

sino tan solament de mil quintars; si aquella nau o aquell leny gitara o li vendra altre cas de ventura, si lo senyor de la nau pora provar o mostrar que aquells mercaders haien mesa mes roba en la nau o en lo leny, que a ell no haurien noliciada, ne en lo cartolari sera scrita; si la nau gitara o sostendra algun dan per rao de aquella roba que enginyosament o fraudolosament sera mesa en la nau o en lo leny, aquell mercader o mercaders que axi enginyosament o fraudolosament hi hauran mesa aquella roba com desus es dit, son tenguts de retre a aquells mercaders de qui aquella roba sera gitada o lo preu d'aquella, e al senyor de la nau o del leny tot lo dan que per culpa d'ells haura sostengut. E si la roba aquella de aquells mercaders, qui aytal cosa com desus es dita feta hauran e comencada, no bastara a esmena a fer a aquells mercaders de qui la roba sera que sera gitada, e encara al dan a restituir que lo senyor de la nau ne haura sostengut, e aquells mercaders hauran altres bens en algun loch; aquells bens deven esser venuts per fer esmena a aquells mercaders de qui aquella roba sera que sera gitada, e per esmena a fer al senyor de la nau o del leny de tot lo dan que per culpa d'ells haura n'sostenguts. E si los bens d'aquells mercaders, qui aytal cosa hauran feta, com desus es dita, no bastaran a esmena a fer a aquells mercaders, de aquella roba que gitada sera, e encara a restituir lo dan que lo senyor de la nau o del leny ne haura sostengut: si ells son aconseguits, deven esser presos e mesos en poder de la senyoria, e star hi tant, tro que ells haien satisfet a aquells mercaders, e al senyor de la nau o del leny, de tot lo dan que per culpa d'ells hauran pres o sostengut. E sia a

and the witnesses have heard nothing mentioned but a thousand quintals, if that ship or vessel has to make jetison, or if any other case of misfortune befall her, and the managing owner of the ship can prove and show that those merchants have put on board more goods in the ship or vessel than they have freighted, or than are entered in the ship's register book, if the ship shall make jetison or shall sustain any loss by reason of those goods which have been craftily and fraudulently put on board the ship or vessel, the merchant or merchants who have so craftily and fraudulently put on board the goods as above said, are bound to restore to those merchants to whom the goods belong which have been cast overboard, those goods or the price of them, and to the managing owner of the ship or vessel all the loss which he may have sustained through their fault. And if the goods of those merchants, who have done such a thing as above said, shall not suffice to make compensation to those merchants, whose goods have been cast overboard, and further to reimburse the loss which the managing owner of the ship has sustained, and those merchants have other goods in any place, those goods ought to be sold to make compensation to the merchants whose goods have been cast overboard, and to make compensation to the managing owner of the ship or vessel for all the loss sustained through their fault. And if the goods of those merchants who have done such a thing as above said shall not suffice to make compensation to those merchants whose goods have been cast overboard, and further to repair the loss which the managing owner of the ship or vessel shall have sustained, if they are overtaken they ought to be imprisoned and placed in the custody of the local authorities, and remain there until they have satisfied those merchants and the managing owner of the ship or vessel for all the loss, which they have sustained through their fault. And it is at the option of those

alt d'aquells mercaders e del senyor, qui aquell dan haura sostengut per culpa d'aquells, qui aytal cosa, com desus es dita, hauran feta, de fer demanda contra ells, tot en axi com aquells que enginyosament ab semblanca de amistat portan algu a juy de mort. E, si per ventura la nau o lo leny no gitava, ne n'sostendra dan algu lo senyor de la nau o del leny, e trobara al descarregar aquella roba que aquells nolieiada no hauran, sia en son alt que la meta en poder de la senyoria on sera. E si la met en poder de la senyoria, deu esser axi partida, que lo terc de aquella roba deu esser del senyor de la nau o del leny, e los personers deven hi haver en aquell terc la part lur, segons la part que hauran en la nau o en lo leny, e l'altre terc deu esser de la senyoria, e l'altre terc deu esser donat per amor de Dieu a cativs a traure. E si lo senyor de la nau o del leny volra fer gracia a aquells mercaders de qui aquella roba sera, que no la meta en poder de la senyoria, sia en alt del senyor de la nau o del leny de pendre quin nolit si volra, segons que en un capitol ja desus es dit. Per que, lo mercader se deu guardar que no meta roba en nau ne en leny, si donchs no la havia nolieiada, perco que la condicio, que desus es dita, no li pusca desus esser posada.

Capitol cxliii. De adob e de exarcia necessaria

Nau [1] o leny, que sia nolieiada a scar per mercaders, deu seguir lo viatge segons que en la carta sera contengut. E si per ventura la nau o l'leny stava tant en lo viatge, que li sia mester donar lats o que haya

[1] *Nau*] Esp. 124, chapter cl. begins here with the Rubric "Nau o "leyn qui sia noliejada a escar."

merchants and of the managing owner who has sustained that loss through the fault of those, who have done such a thing as above said, to bring a claim against them in the same way, as against those who with a semblance of friendship expose any one to the peril of death. And if by chance the ship or vessel does not make jetison and the managing owner of the ship or vessel does not sustain any loss, and he shall find on discharging her cargo the goods which have not been freighted, it is at his option to put the shipper into the custody of the local authorities where he shall be. And if he puts him into the custody of the local authorities, it ought to be so divided, that one third part of the goods shall be assigned to the managing owner of the ship, in which the part-owners shall share in proportion to the share which they have in the ship or vessel, another third shall be assigned to the local authorities, and another third shall be assigned for the love of God to ransom captives. And if the managing owner of the ship or vessel is willing to show grace to the merchants to whom the goods belong, so as not to give them into the custody of the magistrates, it is at the option of the managing owner of the ship or vessel to take what freight he pleases, according to what has been said in the preceding chapter.[1] Wherefore the merchant should beware of putting on board of a ship or vessel any goods unless he has freighted them, in order that the conditions above stated may not be imposed upon him.

Chapter cxliii. Of the repairs and apparel necessary

A ship or vessel, which is let to freight for a lump sum to merchants, ought to make the voyage according to what is contained in the charter party. And if by chance the ship or vessel has been so long in the voyage that

[1] *chapter*] Chapter lxx. is probably here meant. Chapter ccxii. contains supplemental provisions.

a nau nolieiada a scar.

mester mes de exarcia, que la sua sia consumada tota o partida, lo senyor de la nau no es tengut de donar lats, ne de refrescar l'exarcia, pus complidament haia fet compliment de exarcia o de adob, e lo dit senyor de la nau stant en lo viatge no deu res fer, pus no haura fallit de co que haura promes als mercaders, axi com de exarcia o de adob com ja haia fet compliment lo dit senyor. E si algunes coses axi com exarcia o altres coses necessaries hi haura mester, e los mercaders ho volen comprar, ells ho poder fer, e puys fet lo viatge, los mercaders podren cobrar aquelles coses, les quals seran en la nau o en lo leny per ells comprades; e lo senyor de la nau o del leny no les pot retenir.

Capitol cxliv. Del temps que stara mes la nau nolieiada a scar.

Si nau [1] o leny es nolieiada a scar a temps sabut, si los mercaders la tenen estant en aquell viatge passat lo temps; los dits mercaders deven donar per aquella rao a la nau o al leny del temps que la tendran mes. E si volien comencar altre viatge los mercaders, se deven posar ab lo senyor de la nau o del leny.

Capitol cxlv. De nau nolieiada a quintarades, si li fall exarcia.

Nau [2] o leny qui sia noliciat a quintarades, si li fall exarcia, axi com arbres o ancores o timons, lo senyor ne deu comprar, si ve en loch on ne pusca comprar a preu cominal, co es a saber que es tengut de dar lo dit senyor de la nau fins a dos preus que en la terra, de on ell parti, costava. E si per lo dit preu no n'podia haver, co es a saber per dos tants que en la

[1] *Si nau*] Esp. 124, chapter cli. begins here with the Rubric "Nau "o leyn qui sia noliejat a escar, a "temps sabut."

[2] *Nau*] Esp. 124, chapter clii. begins here with the Rubric "Nau "o leyn qui sera noliejat a quin- "tarades."

it is necessary to heave her over, or it is necessary to have new apparel, for her own is worn out either totally or in part, the managing owner of the vessel is not bound to heave her over,[1] nor to renew her apparel, since he has completely fitted her out with apparel and with repairs, and the managing owner of the ship, whilst she is on the voyage, is not bound to do any thing, since he has not failed in any thing which he has promised to the merchants as well as regards the ship's apparel as her repairs, since he has completed them both. And if there is need of any thing, such as ship's apparel or other necessaries, and the merchants desire to purchase them, they may do so, and when the voyage is concluded, the merchants may claim for themselves the things which they have bought for the ship or vessel, and the managing owner of the ship or vessel may not retain[2] them.

for a ship let to freight for a lump sum

If a ship or vessel is let for a lump sum and for a fixed time, if the merchants keep her on the voyage after the time is passed, the said merchants ought to pay to the ship or vessel in proportion to the excess of the time during which they shall keep her. And if the merchants wish to commence another voyage, they ought to make an arrangement with the managing owner of the ship or vessel.

Chapter cxliv. Of the time exceeded by a ship let for a lump sum.

A ship or vessel which is freighted by quintals, if her apparel fails her, such for instance as her masts or anchors or rudders, the managing owner of the ship ought to buy others, if he comes to a place where he can buy them at the ordinary price, that is to say, the managing owner of the ship is bound to pay as much as double the price which the articles cost in the country from which he has departed. And if he cannot procure them for the said price, that is to say, for twice as much

Chapter cxlv. Of a ship freighted by the quintal, if the apparel fails her.

[1] *heave her over*] See chapters xvii. and cx.

[2] *retain*] Similar provisions are contained in chap. cxxxviii.

sua terra valia, no n'es tengut de comprar: e si n' compra e costa mes dels dits dos preus, los dits mercaders deven pagar del lur lo sobrepus, per sou e per livra o per besant, de tota la roba. E si cas es, que ans que haien comprada la dita exarcia, havian tallada antena per fer timo o timoneres o altre lenyam necessari a la nau, per falta de exarcia, los mercaders son tenguts de pagar la dita antena, e lo senyor de la nau deu comprar altra antena en esmena de aquella.

Capitol cxlvi. De nau qui no pora fer lo viatge empres per empatx de senyoria.

Si nau [1] o leny per alguna condicio sera empatxat de senyoria e no gosava anar la on la viatge sera levat, e lo senyor de la nau trobara ab los mercaders altre loch per fer port: si lo dit loch era pus luny que loch on lo empatxament era, on volier anar de cl. milles, los mariners deven seguir lo dit viatge menys de junta a lur lóguer. Empero, si la nau crexia del nolit per les dites cl. milles, que l's mariners fossen crescuts de lur loguer per aquella manera que la nau se crexera de nolit, e si la nau no creix del nolit, ne axi los dits mariners de lur loguer. Encara mes, si la nau per lo dit empatxament haura a romandre en un loch e descarregar, segons que la nau guanyara de nolit los mariners guanyaran de lur loguer, en aquella forma meteixa.

Capitol cxlvii. Si li nau per empatx

Si mercaders [2] nolieiaran nau o leny per anar carregar en algun loch, e quant ells seran aqui junts ab la nau o ab lo leny on devian corregar, aqui haura em-

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[1] *Si nau*] Esp. 124, chapter chii. begins here with the Rubric "Si nau o leyn per alcuna condicio "per empenyment de senyoria."

[2] *Si mercaders*] Esp. 124, chapter cliv. begins here with the Rubric "Si mercaders noliejaran nau o "leyn per anar carregar."

as they would be worth in his own country, he is not bound to purchase them, and if he purchases them, and they cost him more than the said price, the said merchants ought to pay from their own money the surplus in shillings, and pounds, or in besants, according to the price of all their goods. And if the case occurs that before they have bought the said apparel they have cut up a yard to make a rudder or a tiller or any other wood work from defect of the ship's apparel, the merchants are bound to pay for the said yard, and the managing owner of the ship ought to buy a new yard to compensate for the old one.

Chapter cxlvi. Of a ship, which cannot make the voyage from an impediment of the sovereign power.

If a ship or vessel shall be impeded by the local authorities for any reason, and dare not go to the place for which the voyage has been settled, and the managing owner of the ship shall arrange with the merchants some other place as a port of discharge, if the said place to which they wish to go shall be more distant than the place in which the impediment exists by one hundred and fifty miles, the mariners ought to perform that voyage without any addition to their wages. Nevertheless, if the ship shall increase her freight for those one hundred and fifty miles, the mariners shall have their wages increased in the same degree as the ship's freight is increased, and if the ship does not increase her freight, the said mariners shall not have their wages increased. Further, if the ship by reason of the said impediment has to remain in a place and discharge her cargo, according as the ship shall earn freight the mariners shall earn wages in the very same proportion.

Chapter cxlvii. If the ship from an impediment of the sove-

If the merchants have hired for freight a ship or vessel to go and load in any place, and when they have come there with the ship or vessel, where they ought to take in her cargo, there shall be an impediment [1] on

[1] *an impediment*] The question of embargo by the local authorities is further discussed in chap. ccxxxvii.

de senyoria no carregara e ira en altra part.

patxament de senyoria, que negu no gosa carregar ne res traure de la terra; si l's mercaders e l'senyor de la nau sabran altre loch on no haia empatxament de senyoria on ells poguessen carregar; si l'senyor de la nau e los mercaders se n'avenen, lo senyor hi pot anar, que mariner no li pot contrastar, segons que en lo capitol desusdit es contengut. E si los mercaders no faran junta de nolit al senyor de la nau, lo senyor de la nau no es tengut de fer junta als mariners de lurs loguers. E com ells seran junts en aquell loch on ells hauran fe que poguessen carregar, o abans que los mercaders fossen espatxats o la nau fos carregada tota o partida, vendra aqui lo dit empatxament, axi cum desus es dit, e los mercaders no poran acabar que ells puguen traure de aquell loch aquells mercaderies, que ells comprades hauran, ne encara algunes altres que ells volguessen comprar, e lo senyor de la nau congoxera als mercaders que ells que l'espatxen, e lo senyor de la nau veura e conexera que ells no l'poden espatxar per rao del empatxament que aqui sera, e lo senyor de la nau demanara als mercaders lo nolit e la messio que ell fara, e que l'espatxen; los mercaders no son tenguts al senyor de la nau de pagar lo nolit tot ne partida, perco, car no es lur culpa que l'empatxament es de senyoria; car a empatxament de Deu, ne de senyoria, no pot algu res dir ne contrastar. E si los mariners demanaran lo loguer al senyor de la nau, no l's es tengut del loguer a donar pusque ell no guanya lo nolit, jat sia aco que los mariners hi haien molt maltret hagut, encara n'y ha mes lo

the part of the local authorities, so that no one dare load or export any thing from the country; if the merchants and the managing owner of the ship shall know any other place where there is no impediment on the part of the local authorities, and where they can take in a cargo, if the managing owner of the ship and the merchants agree, the managing owner may go there and the mariner may not object, according as it has been stated in the preceding chapter. And if the merchants make no addition to the freight of the ship, the managing owner of the ship is not bound to make any addition to the wages of the mariners. And when they shall have arrived at that place, where they have a belief that they may take in a cargo, and before the merchants have despatched their business, or the ship is loaded either wholly or in part, an impediment of the kind above stated surprises them, and the merchants cannot complete their business, and are unable to export from that place the merchandises, which they have purchased, or any other merchandises which they may wish to purchase, and the managing owner of the ship shall urge the merchants to dispatch him, and shall see and be cognisant that they cannot dispatch him by reason of the impediment which has supervened there, and the managing owner of the ship shall demand from the merchants his freight and the expenses which he has incurred, or that they dispatch him, the merchants are not bound to pay to the managing owner of the ship the freight neither in whole nor in part, because it is not their fault that an impediment has been raised by the local authorities, for no one can object to or dispute against an impediment on the part of God or of the local authorities. And if the mariners demand their wages from the master of the ship, he is not bound to give them any, for he has earned no freight, for although the mariners have suffered much prejudice, the managing owner of the ship has suffered much more, for he has

reign power cannot take in her cargo and shall go to another port.

senyor de la nau mes que ells, qui consuma si meteix e la nau e ha fer messio. Mas, los mercaders son tenguts de pagar al senyor di la nau la meytat de tota la messio, que ell haura feta, e sie n' cregut per son sagrament; e los mercaders li son tenguts de donar la y menys de tot contrast; e res als no li sien tenguts donar, sino axi com desus es dit, si donchs ells no li volen fer alguna gracia per rao del traball que l'senyor de la nau haura sostengut. Empero, si com los mercaders nolieiaren la nau, lo senyor de la nau e los mercaders sabien ja aquell empatxament ans que la nau se nolieias, e perco com ells seran voluntaris de anar a guanyar, e cuydaran acabar que ells hi pusquen carregar ab servey que ells facen a senyoria; e quant seran en aquell loch, que entre ells sera empres, on ells devien carregar, e per neguna rao no poran acabar que y pusquen carregar, ne res traure d' aquell loch, los mercaders no son tenguts de res a donar al senyor de la nau de la messio que feta haura, ne de esmena a fer dels dans ne dels destrichs que l'senyor de la nau ne haura sostenguts; perco com lo senyor de la nau sabia aytambe aquell empatxament metex com los mercaders E per aquesta rao los mercaders no li son tenguts de pagar nolit ne messions, ne dan que l'senyor de la nau ne hagues fet o sostengut. Mas, empero, si los mercaders sabien aquell empatxament abans que ells nolieiassen la nau, e l'senyor de la nau no u sabes; si lo senyor de la nau pot provar e metre en veritat que l's mercaders sabien aquell

wasted his time and his ship, and has had to incur expenses. But the merchants are bound to pay to the managing owner of the ship the moiety of all his expenses, which he has incurred, and he is to be believed upon his oath; and the merchants are bound to pay it without any dispute; and are not bound to pay him any thing more except as above said, unless they wish to show him some grace by reason of the trouble which the managing owner of the ship has undergone. On the other hand, if when the merchants freighted the ship, the managing owner of the ship and the merchants knew of this impediment before the ship was freighted, and nevertheless were desirous to go for gain and believed that they would succeed and would be able to load through presents [1] made to the local authorities, and when they shall arrive at that place, which had been agreed upon between them where they ought to load, they can by no means succeed in obtaining permission to load or to embark any thing from the place, the merchants are not bound to pay the managing owner of the ship for the expenses which he has made, nor to make any compensation for the loss and the prejudice which the managing owner of the ship may have sustained, because the managing owner of the ship was as well aware of that impediment as the merchants. And for that reason the merchants are not bound to pay freight nor the expenses nor the loss which the managing owner of the ship may have incurred or sustained. But, neverthelsss, if the merchants knew of that impediment before they hired the ship on freight, and the managing owner did not know it, if the managing owner can prove and establish for truth that the merchants knew of that impediment

[1] *presents*] The word "servey" is used in a similar sense in chapter clxxx. It is translated "presente" in the Italian version, and "geschenk" in the Dutch translation of Westerveen. M. Pardessus translates it "donatives," which he says is a word in similar use in the Levant trade at the present time.

empatxament ans que ells nolieiassen la nau, los mercaders son tenguts de donar e de pagar al senyor de la nau tot lo nolit que entre ells sera empres, e tota la messio que l'senyor de la nau ne haura feta, e lo senyor de la nau es tengut als mariners de pagar tot lo loguer que ell promes los havia, axi be com si havien fet tot lo servey de tot lo viatge, ab que l'senyor de la nau haia tot son nolit. Empero, qualque pati que l'senyor de la nau fara ab los mercaders, a aquell pati deven esser los mariners. Encara mes; si lo senyor de la nau sabia aquell empatxament ans que ell nolieias la nau a aquells mercaders, e los mercaders no u sabien, si los mercaders lo y poden provar e en veritat metre, lo senyor de la nau es tengut als mercaders de retre e de donar tot lo dan e tot lo greuge e tota la messio e tot lo interes, que l's mercaders ne hauran sostengut per culpa del senyor de la nau, qui sabia l'empatxament e no l's ho havia dit ni demostrat. Encara, es tengut lo senyor de la nau de pagar als mariners tot lo loguer que ell promes los havia, si donchs los dits mariners no sabien ja aquell empatxament, ans que ab lo senyor se acordassen. E si los mariners sabien aquell empatxament, lo senyor de la nau no l's es tengut de res a donar ne de pagar lur loguer. E tot co que desus es dit, deu esser menys di frau e de tot engan.

Capitol cxlviii. Patro qui nolieiara a scar, com es tengut als mariners.

Senyor[1] de nau o de leny, qui haura logat lo leny a scar a algun hom, lo senyor de la nau se guart a qui nolieiara, que si aquell no pot pagar, los mariners perdrien lur loguer; que un barater o un trafeguer se trova pus tost ab un altre que no fa ab un bon home, que lo senyor del leny hi poria trobar trafechs, que nolieiaria son leny a algun home, e puys metria y trafech, que quant lo mariner hauria servit son temps,

[1] *Senyor*] Esp. 124, chapter clv. begins here with the Rubric "Senyor de nau o de leyn qui aura logat lo leyn a escar."

before they hired the ship on freight, the merchants are bound to pay to the managing owner of the ship all the freight which has been agreed upon between them, and all the expenses which the managing owner has made, and the managing owner is bound to the mariners to pay all the wages which he has promised them, precisely as if they had performed all the service of the voyage, seeing that the managing owner of the ship has received all his freight. Nevertheless, whatever compact the managing owner of the ship shall make with the merchants, to that compact the mariners ought to be bound. Still further, if the managing owner of the ship knew of the impediment before he let his ship to those merchants, and the merchants did not know of it, if the merchants can prove and establish the truth of that fact, the managing owner is bound to replace and pay all the loss and all the prejudice, and all the expenses, and all the interest, which the merchants may have sustained by the fault of that managing owner of the ship, who has known of the impediment, and has not told or declared it. Further, the managing owner of the ship is bound to pay to the mariners all the wages which he has promised them, unless the mariners knew of the impediment before the managing owner engaged them. And if the mariners knew of that impediment, the managing owner is not bound to give nor to pay them their wages. And all that has been above said ought to be done without fraud or deceit.

Chapter cxlviii. The managing owner, who has let his ship for a lump sum, how he is responsible to the mariners.

A managing owner of a ship or vessel, who has let the vessel for a lump sum to any one, must beware to whom he lets it, since if that person cannot pay, the mariners will lose their wages, for as a rogue or a trickster treats more readily with another person than with a man of respectability, so the managing owner may play a trick in letting his vessel to some one, and may afterwards play a trick in causing him to disappear or run away, when the mariner has served his time, be it longer

poch o molt, ell faria amagar aquell o fugir, e lo mariner perdria son temps, per lo senyor de la nau qui seria endeutat per lo leny. Sia per aquell qui fugira o morra, lo leny sia tengut de pagar los mariners, axi com ells ho hauran servit, e lo leny es en aquella forma dels mariners, si hom no troba bens del sobre dit logater qui sera fugit o mort o amagat. E si tan sera que l'senyor de la nau o del leny hagues fet per trafech a aquell hom que y hagues prestat o no, menys que no degues o que moris, lo senyor de la nau o aquell qui la nau menara deu pagar lo mariner, que lo mariner no pert son loguer per fugidor ne per trafegador ne per prestador ne per mort de senyor.

Capitol cxlix. Com patro deu anar en lo viatge, sino per certs casos.

Senyor [1] de nau o de leny, qui ha nolieiada la sua nau o leny a mercaders o a altres, no s'pot abstraure de anar al viatge en persona, si donchs no u empren al comencament, com nolieiara la nau als mercaders. E si roman del viatge menys de voluntat dels mercaders, ell es tengut de esmenar e de restituir tot lo dan que l's dits mercaders sostendran en aquell viatge, lo quel ells hauran sostengut per culpa del senyor qui romas sera. E si lo senyor de la nau roman del viatge ab voluntat dels mercaders, no l's es tengut d'algun dan que ells sostenguessen. Mas, ell los es tengut de metre un hom en la nau en loch d'ell, qui sia tengut als dits mercaders a totes les convinences que ell los era obligat; e aquell senyor qui ell y metra sia a coneguda del notxer; e lo notxer sia tengut als mercaders, per lo sagrament que fet ha, de dir veritat, ja aquell hom si sera suficient de tenir loch de senyor. E si suficient

[1] *Senyor*] Esp. 124, chapter clvi. begins here with the Rubric "Senyor de nau o de leyn qui aura noliejada la sua nau."

or shorter, in which case the mariner might lose his wages, by reason of the managing owner being indebted to the ship. Whoever the freighter may be who runs away or dies, the ship is bound to pay the mariners, according as they have served in her, and the ship is bound to pay the mariners, if no goods can be found of the aforesaid freighter who has run away, or is dead, or has disappeared. And if it should be that the managing owner of the ship or vessel has fraudulently set up a debt to a man, to whom he owes nothing, or if he dies, the managing owner of the ship or he who conducts the ship ought to pay the mariner, for the mariner ought not to lose his wages by an evasion, or by a fraud, or by a debt, or by the death of the managing owner.[1]

Chapter cxlix. How the managing owner ought to go on the voyage, except in certain cases.

The managing owner of a ship or vessel who has let his ship or vessel to merchants or to others cannot decline to go on the voyage in person, unless he has so stipulated at the commencement when he let his ship to the merchants. And if he remains behind on the voyage without the consent of the merchants, he is bound to compensate and restore all the loss which the said merchants shall sustain in that voyage, and which they shall have sustained through the default of the managing owner, who has remained behind. And if the managing owner remains behind on that voyage with the consent of the merchants, he is not liable for any damage which they may sustain. But he is bound to substitute in his place a person on board the ship, who shall be liable to the said merchants for all the arrangements which he shall have made with them, and the master whom he shall substitute for himself shall be known to the mate, and the mate is bound to the merchants by the oath which he has taken to say the truth, whether that person is competent to fill the place of the managing

[1] *owner*] The subject of the insolvency of the charterer has been already considered in chapter xxxviii., with which the provisions of this chapter do not quite accord.

no y sera, lo senyor de la nau lo es tengut de metre hi altre, qui sia suficient, en loch d'ell. Empero; senyor de nau se pot abstraure de anar en lo viatge per quatre coses, co es, per malaltia, e per pendre muller, e per anar en romiatge, ab que n'hagues fet vot abans que nolicias la nau o leny, o per empatxament de senyoria. E quascuna d'aquestes coses desusdites, que sia menys de frau; e gens per totes aquestes raons desusdites no sia escusat que no haia a metre un home axi com desus es dit. E aquest capitol fo fet perco, car molt mercader nolieia la sua roba a aquell senyor de nau per amistat que haura ab ell, o per gran bondat que hom li n'haura dita; e si l'mercader sabia que l'senyor de la nau degues romandre del viatge, ell no li haguera nolieiada la sua roba ne mesa en la nau, si ell li fes tornes mes, que no li deu dar de nolit.

Capitol cl. De nau qui per fortuna o altre accident ha a ferir en terra.

Nau[1] o leny qui aia a ferir en terra per fortuna de mal temps, o per qualsevol altre cas se sia, lo senyor de la nau o leny deu dir e manifestar en aquell punt o en aquella hora als mercaders en oida del scriva e del notxer e dels mariners: "Senyors, no n's podem ascon- "dir que no haiam a ferir en terra, o yo diria en axi "que la nau anas sobre los havers, e los havers sobre

[1] *Nau*] Esp. 124, chapter clvii. begins here with the Rubric "Nau "o leyn que aja farir en terra per "fortuna de mal temps."

owner. And if he be not a competent person, the managing owner is bound to substitute another person, who shall be competent, in his place. Nevertheless, the managing owner may decline to go on the voyage for four things, that is, from illness, or in order to take a wife, or in order to go on a pilgrimage, which he has made a vow to perform before he let his ship or vessel, or owing to an embargo of the local authorities. And whichever it may be of these four things, it must be without fraud, and no managing owner is excused for any of the above reasons from finding a substitute in his place in the manner above said. And this chapter was made, for many a merchant freights his goods to a certain managing owner of a ship from friendship which he has towards him, or from the good character which men have given of him, and if the merchant knew that the managing owner would remain behind on the voyage, he would not have freighted his goods or put them on board the ship;[1] if he does it more than once, he ought not to pay any freight.[2]

Chapter cl. Of a ship, which from bad weather or other accident has to take the ground.

If a ship or vessel has to run aground[3] from bad weather, or from any other cause, whatsoever it may be, the managing owner of the ship or vessel ought to say and declare at that moment and at that hour to the merchants in the hearing of the ship's clerk, and of the mate and of the mariners, "Gentlemen, we can- "not conceal from ourselves that we have to run the "ship aground, and I propose that the ship shall be "covered by the merchandise, and the merchandise shall

[1] *the ship*] Under what circumstances the managing owner may devolve the command of the ship upon an acting master is discussed in chapters clxxiii. and clxxiv.

[2] *freight*] The Editor has hazarded a translation of the text, which varies from that which M. Pardessus has adopted, who in his turn disapproves the translation adopted by M. Boucher.

[3] *run aground*] This subject is further discussed in chapters cliii., clxxxvii., and ccxxvi.

" la nau." Si los mercaders ho otorgan tots o la major partida, e si la nau ne va en terra e s'romp o pren algun dan, aquella nau o leny a qui aquest cas o aquesta ventura sera esdevenguda, deu esser preat e posat preu quant valia abans que la dita nau o leny ne vengues en terra, entre los mercaders de qui la roba sera, que s'sera salvada, e lo senyor de la nau o leny, si entre ells se porran avenir: si no, deu esser mes aquell contrast qui entre elles sera, per rao del preament de la nau o del leny, a qui aytal cas com desus es dit sera esdevengut, en poder de dos bons homens que sien o sapien be de la art de la mar; e qualsevol cosa que a quells ne sera vista per be, e ells ne diran, allo n'deu esser seguit. E si la nau o l'leny se rompra, lo haver, qui salvat sera, deu donar al senyor de la nau o del leny tot aquell preu que entre ells sera avengut, o aquell que aquells dos bons homens, en poder de qui sera mes, ne hauran dit o n'diran. Empero, tota la exarcia e tot co que s'salvara de la nau o leny, a qui aytal cas sera endevengut, deu esser preada e mesa en preu, e aquell preu deu esser levat del preu de aquella nau o leny qui trencat sera, co es del preu que entre los mercaders, de qui l'aver salvat sera, e l'senyor de la nau o leny sera empres, o en axi com aquells dos bons homens ho hauran dit; e lo senyor de la nau deula rebre en aquell preu que de la nau deu haver E si ell pendre no la y volra, sia mesa al encant, e qui

" be covered by the ship." If the merchants either all or the greater part assent to this, and if the ship is run ashore and is broken up, or suffers any damage, that ship or vessel, to which that accident and misfortune has happened, ought to be valued and appraised, at what its value was before the said ship or vessel went ashore, between the merchants to whom the goods belong which have been saved, and the managing owner of the ship or vessel, if this can be agreed with one another; if not, the dispute, which shall arise between them on account of the appraisement of the ship or vessel, to which the abovesaid disaster has happened, ought to be submitted to the adjudication of the prudhommes who understand and are well versed in the art of the sea,[1] and whatever thing shall seem well to them and they shall decide, ought to be followed. And if the ship or vessel shall break up, the goods that shall be saved ought to pay to the owner of the ship or vessel the full price which shall be agreed upon, or that which those prudhommes, to whose decision it has been submitted, shall have said or shall say. Nevertheless all the ship's apparel and all that which shall be saved of the ship or vessel, to which that disaster has happened, ought to be valued and appraised, and that value ought to be deducted from the value of that ship or vessel, which has broken up, that is from the value which shall have been agreed upon between the merchants, whose goods have been saved, and the managing owner of the ship or vessel, or that which two prudhommes have decided; and the managing owner of the ship ought to deduct it from the price which he ought to have for his ship. And if he does not choose to admit the value, let the goods be put up to auction and let the purchaser have

[1] *the art of the sea*] The same phrase is made use of in the Maritime Ordinance of Trani of A.D. 1063, which was made by certain persons, who are styled in the ordinance "electi consuli in arte de "mare."

mes hi dira, aquell la haia; empero, totavia deu haver lo senyor de la nau aquell preu qui posat sera a la nau. E si per ventura la nau o leny no s'rompra, mas que s'consentira o pendra algun dan, lo senyor de la nau o del leny es tengut de metre part en aquell consentiment, o en aquell dan que la nau o leny haura pres, per tot aquell preu que la nau o leny sera preat, per sou e per livra, axi com l'aver qui salvat sera, e en tota la messio que costara aquell consentiment o aquell dan, que la nau o leny haura pres. Empero, si lo senyor de la nau dira que la nau vaia sobre los havers que s'salvaran, e los mercaders lo y otorgaran e lo senyor de la nau no agermanara la nau ab l'aver, si la nau ne va en terra o pren algun dan, tot lo dan que la nau pendra li deu esmenar aquell haver que s'salvara; aquell senyor de la nau no y es tengut de res a metre, perco car la nau no s'sera agermanada ab l'aver, e perco car los mercaders lo y hauran otorgat. E si la nau se rompra, aco no cal dir ni recapitular, perco car ja es en lo capitol desusdit esclarit e certificat. Empero, si los mercaders dien e manifesten al senyor de la nau que l's havers perduts facen a aquells qui restauraran, e lo senyor de la nau e los mercaders ho otorgan, tots o la major partida, l'aver perdut

them who will give the most for them, nevertheless, under all circumstances the managing owner of the ship ought to have that value at which his ship has been appraised.[1] And if by chance the ship or vessel does not break up, but its seams open or it suffers any damage, the managing owner of the ship or vessel is bound to contribute to that opening of the seams or to that damage which the ship or vessel has suffered, at the price at which the ship or vessel shall be appraised,[1] by shillings and pounds, precisely as the goods which have been saved, and to all the expenses which that opening of the seams or that damage, which the ship or vessel shall have suffered, shall cost. Nevertheless, if the managing owner of the ship shall propose that the ship shall be covered by the goods, which shall be saved, and the merchants assent to this, and the managing owner of the ship shall not associate mutually the ship and the merchandise, if the ship goes ashore and suffers any damage, all the damage which the ship shall suffer, the goods which shall be saved ought to make good; and the managing owner of the ship is not bound to contribute anything, because the ship and the goods have not been mutually associated, and because the merchants have agreed to this. And if the ship shall break up, it is not worth while to say and recapitulate what has already been said and declared in the aforesaid chapter.[2] Nevertheless, if the merchants say and announce to the managing owner of the ship that the effects recovered shall answer for the effects lost, and the managing owner of the ship and all the merchants or the greater part shall assent to this, the

[1] *appraised*] This provision seems rather to conflict with chapt. liv., which requires the shipowner only to contribute half the value of his vessel.

[2] *aforesaid chapter*] The provision is made in an earlier part of the same chapter. The phrase may be a relic of an earlier arrangement, under which the chapter was divided into two chapters.

deu esser comptat sobre l'aver restaurat per sou e per livra; e lo senyor de la nau es hi tengut de metre tot lo preu que haura hagut, en esmena de la nau, al haver perdut, axi com fara l'aver restaurat per sou e per livra. E si per ventura en la nau no havia mercader algu, lo senyor deu e pot esser mercader en aquell cas e en aquella sao; e aco que fara, que u faca ab consell del notxer e del scriva e dels mariners. E si lo senyor de la nau fa axi aco, deu esser axi tengut per ferm, com si tots los mercaders hi eren o axi com si tota la roba era sua.

Capitol cli. De nau carregada que n'va en terra.

Si algun[1] senyor de nau o leny haura carregada la sua nau o l'seu leny de roba de mercaders per anar descarregar en algun loch, lo qual loch sera ja empres entre ell e los mercaders de qui aquella roba sera; e anant en aquell viatge vendrali cas de ventura, que n'ira en terra; e si la nau o lo leny se rompra e pendra algun dan, deuli esser feta esmena, segons que entre ell e los mercaders sera empres, abans que la nau o leny vaia en terra. E si l'senyor de la nau o leny demana lo nolit, deuli esser donat, si quantitat de roba s'y haura salvada; e si res no s'y salvara, negu no li es tengut de nolit a pagar, pusque axi sera que tota la roba sera perduda. E si quantitat de roba s'y salva, e ell demana lo nolit axi de la roba perduda com de la salvada, deuli esser pagat, segons que la roba haura portada, e ell es tengut de ajudar a esmenar aquella

[1] *Si algun*] Esp. 124, chapter clviii. commences here with the Rubric "Si alcun senyor de nau "aura carregada la sua nau," to which have been added in a more modern hand, in black ink, some words which are not very legible, and in the place of which M. Pardessus has introduced certain words which are added in the table of contents, viz., "per anar en lochs "empresos e vendrali cas que n'ira "en terra e no haura agerminat la "nau ab les robes."

effects lost shall be reckoned over and above the goods recovered by shillings and pounds; and the managing owner of the ship is bound to add all the value, which he shall have received as indemnification for the ship, to the goods which are lost, in the same manner as the goods which are recovered, by shillings and pounds. And if by chance there be no merchant in the ship, the managing owner may and ought to be a merchant in such a case and under such circumstances, and that which he shall do, he should do with the advice of the mate and of the ship's clerk and of the mariners. And if the managing owner of the ship does so, it ought to be held valid, just as if all the merchants were there, or just as if all the goods were his own.

Chapter cli. Of a loaded ship, which goes ashore.

If any managing owner of a ship or vessel has loaded his ship or vessel with the goods of merchants to go to discharge them in a certain place, which place shall have been agreed upon between him and the merchants to whom those goods belong, and whilst he is on that voyage a case of misfortune overtakes him and he has to run his vessel ashore, if the ship or vessel shall break up or suffer any loss, compensation shall be made according to what shall have been agreed upon between him and the merchants before the ship or vessel went ashore. And if the managing owner of the ship or vessel demand his freight, it ought to be paid to him, if any quantity of the goods have been saved, and if nothing be saved, no one is bound to pay him any freight,[1] since it happens that all the goods are lost. And if a quantity of the goods are saved, and he demands his freight of the goods lost as well as of the goods saved, he ought to be paid his freight according to the goods which he has carried, and he is bound to aid to compensate for

[1] *any freight*] The same principle was affirmed by the law of Rome, Dig. xix. tit. 11 fr. 15 § 6, Locati, Conducti. It is also reasserted below in chapter clxxxvii.

roba que sera perduda per tot aytant com ell haura rebut de nolit, per sou e per livra, axi com fara la roba que sera salvada. E si lo senyor de la nau no demanara nolit sino de la roba que sera salvada ne ell ne pendra, ell no es tengut de ajudar a esmenar aquella roba, que sera perduda, pusque nolit algu no n'haura pres, ne hagut res, co es a entendre per lo nolit. E si per ventura entre lo senyor de la nau o leny e los mercaders no haura convinenca ne empressio alguna, com la nau o leny ne va en terra; si la nau o leny romp o pren dan, los mercaders no li son tenguts de esmena a fer pus alguna convinenca ne empressio no sera feta entre ells, si donchs los mercaders no li volran fer alguna gracia; mas, sonli tenguts de pagar lo nolit de la roba que sera restaurada, per aytant com ell portada la haura. E si per ventura entre lo senyor de la nau o leny e los mercaders haura convinenca o empressio alguna, los mercaders li son tenguts de esmena a fer segons que la convinenca o empressio sera feta entre ells, e lo senyor de la nau o leny e pot e deu retenir de aquella roba dels mercaders tanta fins que li sia ben bastant a aquella esmena, a que los mercaders li seran tenguts de fer, e encara a molt mes, per co que ell no l's'haia anar derrere per lo seu meteix. E aco no li pot algu ne deu contrastar, e l'senyor de la nau o leny no es tengut de pendre fianca ne penyora de altra roba, si no de aquella meteixa que ell se

the goods which are lost in respect of the freight which he has received by shillings and pounds, precisely as the goods saved will contribute. And if the managing owner of the ship does not demand freight except for the goods which are saved, nor receive it, he is not bound to help to compensate for those goods which are lost, since he has not taken any freight for them, nor received anything, that is to say, for the freight.[1] And if by chance no agreement or undertaking has been entered into between the managing owner of the ship and the merchants, when the ship or vessel went ashore, if the ship or vessel breaks up or suffers damage, the merchants are not bound to make any compensation to him, since no agreement or undertaking has been entered into between them, unless the merchants wish to do him a favour; but they are bound to pay the freight of the goods which shall be recovered for the distance which he has carried them. And if by chance any agreement or undertaking has been entered into between the managing owner of the ship or vessel and the merchants, the merchants are bound to make compensation to him according to the agreement or undertaking entered into between them, and the managing owner of the ship or vessel may and ought to retain of the goods of the merchants as much as will be sufficient for that compensation, which the merchants are bound to make to him, and something more, in order that he may not have to run after them [2] for his right. And no one may dispute this, and the managing owner of the ship or vessel is not bound to take as security or in pledge other goods than those very goods which he

[1] *for the freight*] The same principle has been applied to regulate cases of jetison in chapt. liii.

[2] *run after them*] Similar motives are assigned in chapter liii. for maintaining the managing owner's lien on the cargo, but the right of the managing owner in this case is founded on a special compact with the merchants.

havia portada, si ell no s'vol, ne senyoria ne algu altre no lo n'deu forcar ne pot, si ell no s'vol.

Capitol clii. Del descarregar part ab bonanca e part ab fortuna.

Si alguna[1] nau vendra a descarregar en algun loch, e vendra ab bonanca o ab fortuna; si la nau o leny vendra ab bonanca e descarregara aquell jorn una quantitat de la roba a bon mercat, e la nit o al jorn metra s'temporal, e en lo sendema costaran de descarregar mes la meytat o les dues parts que no fahia lo jorn que ell comenca a descarregar, aquells mercaders de qui sera aquella roba que sera descarregada a bon mercat, ne son tenguts de res esmenar a aquells mercaders de qui sera la roba que s'descarregara a carestia, si donchs entre ells no era feta convinenca com comencaren a descarregar, que la una roba ajudas a l'altra si mes costava a descarregar; perco, com per ventura se esdeve a quascun de pendre mercat o carestia. Encara mes, si com la nau o leny haura descarregat una quantitat de la roba que haura portada, se metra temporal tan gran que la roba que sera romasa a descarregar, se perdra, aquella roba que sera descarregada ja no es tenguda de res esmenar a aquella que sera perduda, si donchs entre los mercaders de qui aquella roba sera, no era empres que la una roba fes ajuda a l'altra. E si mercader no y haura algu en la nau, e lo senyor de la nau o leny agermanara la una roba ab

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[1] *Si alguna*] Esp. 124, chapter clix. commences here with the Rubric "Si alguna nau vendra descarregar en algun loch."

has carried, if he does not wish, and neither the local authorities nor any one else may or ought to force him to do so, if he is not willing.

Chapter cliii. Of discharging a part in fine weather and a part in bad weather.

A ship comes to discharge in any place, and comes with good weather or with bad weather, if the ship or vessel shall come with good weather and discharges on that day a quantity of goods at a cheap price, and by night or by day a tempest supervenes so that on the following day it shall cost more to discharge than the half or two-thirds of what it cost on the day when the ship began to discharge her cargo, those merchants to whom the goods belong which have been discharged at a cheap price, are not bound to compensate in any way those merchants, to whom the goods belong, which have been discharged at a dear price, unless there has been made between them an agreement, when they began to discharge, that the one portion of the goods should assist the other if it cost more to discharge them; for this reason, inasmuch as it happens by chance to each person to pay cheap or dear. Still further, if when the ship or vessel shall have discharged a quantity of goods which it has carried, so great a tempest supervenes, that the goods, which remain to be discharged, shall be lost, those goods which shall have been discharged are not bound to compensate in any way for those which shall be lost, unless between the merchants to whom those goods shall belong there has been an undertaking that the one portion of goods shall assist the other. And if there be not any merchant on board the ship, and the managing owner of the ship or vessel shall associate [1] the one portion of the goods with the other,

[1] *associate*] The verb "agermanar" is used to denote a rude contract of mutual assurance concluded either amongst the merchants themselves, or between the merchants and the managing owner of the ship, either at the commencement of the voyage, ch. lxvii., or in the presence of danger, ch. cli. It is further discussed in chapter

l'altra, deu esser axi tengut per ferm com si tots los mercaders hi eren, o axi com si tota la roba era sua; que sua es, pres que la te en comanda. E si la nau o leny se perdra o pendra algun dan, e l'senyor de la nau o leny e los mercaders agermanaran l'aver ab la nau o leny, e la nau o leny ab l'aver se perdra, aquella roba que s'salvara deu ajudar a esmenar la nau o leny segons que les convinences seran entre ells empreses. E si empressio ne convinences no y haura alguna, qui perdut haura per perdut se haura anar. Si en la nau o leny no haura mercader algu, e l'senyor de la nau agermanara la nau o leny ab l'aver, ab consell de tot lo cominal de le nau o de la major partida, deu esser tengut axi per ferm, com si tots los mercaders hi eren, o en axi com si tota la roba era sua; que sua es, pus que la te en comanda. Empero, si lo senyor de la nau o leny no u fara ab consell de tot lo cominal de la nau o de la major partida, no deu haver valor. Perque tot senyor de nau o leny se deu guardar com fara ses faenes e com no, perco que co que ell fara que u faca en guisa, que sia tengut per ferm.

Capitol cliii. De roba banyada per culpa de barquers.

Barquers[1] o jovens homens de ribera, qui carregaran o descarregaran nau o leny, ells deven carregar e descarregar be e diligentment, perco que la roba no s'pusca banyar ne gastar ne perdre per culpa d'ells. E si roba se banyara o s'gastara o s'perdra sens culpa d'ells, ells no sien tenguts de alguna esmena a fer a aquells mer-

[1] *Barquers*] Esp. 124, chapter clx. commences here with the Rubric "Barquers o jovens homens de ribera, que carregaran o descarregaran."

the association shall be held good just as if all the merchants were on board, or just as if all the goods were his own; for they are [virtually] his own, since he has control of them. And if the ship or vessel shall be lost or shall suffer any damage, and the managing owner of the ship or vessel and the merchants shall associate the effects with the ship or vessel, and the ship or vessel with the effects shall be lost, those goods which shall be saved ought to help to compensate the ship or vessel according as the agreement shall be made between them. And if there be no undertaking or agreement, he who has suffered loss must go through his loss. If in the ship or vessel there shall be no merchant, and the managing owner of the ship shall associate the ship or vessel with the effects, upon the advice of all the crew of the ship or of the greater part, the arrangement ought to be kept firm precisely as if all the merchants were there, or as if all the goods were his own; for they are [virtually his own, since he has them under his control. Nevertheless, if the managing owner of the ship or vessel shall not do this with the advice of all the crew of the ship or of the greater part, it ought not to be valid. Because every managing owner of a ship or vessel ought to beware how he shall do any act or how not, in order that what he may do may be done in such a form that it may be held to be valid.

Chapter cliii. Of goods wetted by fault of the boatmen.

Boatmen or young men of the beach, who load or unload ship or vessel, ought to load and unload well and diligently in order that the goods may not be wetted or spoilt, or lost through their fault. And if goods shall be wetted, or spoilt, or lost without fault of theirs, they are not bound to make any compensation to those

clxxxvii. as regards danger of capture by enemies. Traces of this system of mutual assurance are found in documents of the 12th century, but no trace of the modern contract of maritime assurance is to be found of a date earlier than the commencement of the 14th century.

caders de qui aquella roba que banyada o gastada sera o perduda, pus que per culpa d'ells no s' sera banyada o gastada o perduda. Encara mes, si ells carregaran roba o descarregaran, e los manilles d'aquell fax o bala o farcell que ells carregaran o descarregan, les romandran en los mans, e ells mostrar o provar ho poran; si aquell fax o bala o farcell o qualsevulla roba que sia, a qui les manilles seran fallides, se banyara o s'gastara o s'perdra, ells no son tenguts de alguna esmena a fer a aquell de qui aquella roba sera, a qui les manilles seran fallides. Empero, si al carregar o al descarregar se banyara alguna roba o s'gastara e s'perdra per culpa d'ells, son tenguts de tota aquella roba esmenar a aquell de qui sera. E si ells no han de que la puguen esmenar, lo barquer de qui la barca sera n'es tengut, si ha alguns bens de que ho puga fer; si no, deu esser pres e star tant en la preso tro que haia satisfet a aquells mercaders de qui aquella roba sera que per culpa d'ell, o dels homens que ell haura mesos en la sua barca o que per ell hi seran, s'y sera banyada o gastada o perduda; perco com ell pren aytant de bona part del guany, que aquells homens fan ab la sua barca, com ells metexs, e encara molt millor. E es rao que qui part vol haver del guany, que part dega haver de la perdua. Perque, tot barquer se guart e s'deu guardar, quin homens metra en la sua barca e quins no: que si aquells homens faran be lurs affers, ells ne haura la sua part; e si los dits homens fan mal, tot tornara sobre ell qui sera senyor: perco, com negu no fia res a aquells homens sino tant solament a ell qui es senyor; perco, com negu no sab aquells homens qui seran, ne qui no. Perque, quascun barquer se guart e s'deu guardar quins homens metra en la sua barca, e quins no, per carregar o per descarregar, perco que dan algu no li n'pogues venir.

merchants to whom the goods belong, which are wetted, or spoilt, or lost. Still more, if they load or unload goods, and the handles of the bundle, or bale, or parcel, which they are loading or unloading, shall remain in their hands, and they can show and prove it, in case that the bundle, or bale, or parcel, or whatever the goods may be, of which the handles shall have failed, shall be wetted, or spoilt, or lost, they are not bound to make any compensation to him to whom the goods shall belong, of which the handles have failed. Nevertheless, if in loading or unloading any goods shall be wetted, or spoilt, or lost through their fault, they are bound to compensate him to whom the goods belong. And if they have not wherewithal to make compensation, the boatman to whom the boat shall belong is responsible, if he have any property from which he can make compensation; and if not, he ought to be seized and remain in prison until he shall have satisfied those merchants to whom the goods belong, which shall have been wetted or spoilt or lost through his fault, or the fault of the men whom he has placed in charge of his boat, or who were there on his account, because he takes as much of the gain, which those men make with his boat, as they themselves, or even much more. And it is reasonable that he, who will have a part of the gain, should have a part of the loss. Wherefore every boatman should beware and be careful, what men he shall put into his boat and what not, for if those men do their business well, he will have his share of it, and if the said men do it ill, it will all fall upon him who shall be the managing owner, for this reason that no one transacts business with those men, but only with him who is the managing owner, for no one knows who the men are or who they are not. Wherefore every boatman should beware and be careful what men he places in charge of his boat, to load or unload, in order that no damage may result.

Capitol cliv. De barquer, qui pendra a scar carregar o descarregar.

Si algun[1] barquer o jove hom de ribera pendra alguna nau o leny a carregar o descarregar a scar, o a preu sabut, ells son tenguts de carregar o descarregar be e diligentment, e com pus tost poran. E si ells aco faran be e diligentment, axi com desus est dit, los mercaders o lo senyor de la nau per los mercaders los son tenguts de pagar tot co que promes los hauran be e planament, que en res no l's deven contrastar. E si ells contrast algu los hi metran, e los barquers e jovens homens desusdits ne hauran a fer messio o n'sostendran dan algu, los dits mercaders o lo senyor de la nau o leny per los mercaders son tenguts de retre e de donar tota aquella messio o dan o destrich, que per culpa d'ells hauran sostenguda. E aco son tenguts de fer los sobredits mercaders o lo senyor de la nau o leny per ells, sens tot contrast, si tots ells hauran fet lur servey, axi com damunt es dit. Empero, si los dits mercaders o lo senyor de la nau o leny ne pendran algun dan, o n'hauran a fer alguna messio per culpa dels sobredits barquers o jovens homens, perco, car ells ho hauran carregat o descarregat axi com promes hauran, tot aquell dan e aquell destrich e aquella messio, que aquells mercaders o lo senyor de la nau o del leny per ells hauran sostengut per culpa dels dits barquers o jovens homens, ells son tenguts de tot aquell dan o destrich o messio que per culpa d'ells sera pres; e son tenguts donar e retre a aquells mercaders, o al senyor de la nau o leny per ells, tot dan e destrich e messio que per culpa d'ells sera feta sens tot contrast. E si ells no han de que puguen retre ne esmenar, e son aconseguits, ells deven esser presos e mesos en poder de la senyoria, e star tant en la preso tro haien satisfet a aquells mercaders o al senyor de la nau o leny per ells de tot aquell

[1] *Si algun*] Esp. 124, chapter clxi. begins here with the Rubric "Si algun barquer o jova hom de ribera pendra alguna nau ho leyn."

Chapter cliv. Of the boatman, who shall undertake for a lump sum to load or unload.

If any boatman or young man of the beach shall undertake to load or unload any ship or vessel by the job or for a lump sum, they are bound to load and unload her well and diligently, and as quickly as they can. And if they do this well and diligently, as above said, the merchants or the managing owner of the ship for the merchants is bound to pay all which thay have promised well and fully, for they ought not to dispute anything. And if they raise any dispute with them, and the boatmen or young men abovesaid have to incur any expense or sustain any loss, the said merchants or the managing owner of the ship or vessel for the merchants is bound to reimburse and to pay all that expense or loss or damage, which they shall have sustained through their fault. And the above merchants or the managing owner of the ship or vessel for them is bound to do this without any dispute, if they have all completed their services as above said. Nevertheless, if the said merchants or the managing owner of the ship or vessel suffer any loss or have to incur any expense by the fault of the abovesaid boatmen or young men, because they have not loaded or unloaded as they promised, all that loss and that damage and that expense, which the merchants or the managing owner of the ship or vessel for them has sustained by the fault of the said boatmen or young men, they are responsible for all that loss or damage or expense which shall be incurred through their fault; and they are bound to pay and to reimburse to those merchants, or to the managing owner of the ship or vessel for them, all the loss and damage and expense which shall have been incurred through their fault without any dispute. And if they have not wherewithal to reimburse or to compensate, and are sued in Court, they ought to be seized and placed in the custody of the local authorities, and remain in prison until they have satisfied those merchants or the managing owner of the ship or vessel for them, for all that loss which

dan, que hauran soffert per culpa d'ells, o que n'sien avenguts ab ells, o ab lo senyor de la nau o leny per ells.

Capitol clv. De naus ormeiades primer o derrer.

Nau[1] o leny qui primerament sera ormeiat en port o en plaia o en costera o en sparagol, tota nau e tot leny, qui apres de aquella vendra, e aquella encara se deu ormeiar en guisa e en manera que no n'faca algun dan a aquell, qui primerament sera ormeiat. E si dan li fa, deulo li tot esmenar e restituir sens negun contrast. Salvo empero, que si el leny o la nau, que apres de aquella entrara, venia ab fortuna de mal temps que no s'pogues ormeiar, e fahia algun damnatge a la dita nau que primerament hi sera, no li sia tengut de esmenar tot lo dan, que en aquella hora et per aytal cas fet li haura, per co car no es sa culpa. E axi aquest dan aytal, qui per aytal rao sera fet, deu esser mes e posat en coneguda de bons homens e que sien e sapien de la art de la mar.

Capitol clvi. De axo meteix.

Nau[2] o leny qui primer sera ormeiat o en port, o en plaia, o en costera, on en esparagol, o en altre loch, si fara damnatge a aquella nau o a aquell leny qui apres el'ella sera vengut o entrat, no sia tengut de res esmenar del dan que fet li haura per aquesta rao, que si a la nau que primer sera ormeiada falra sa exarcia, o no n'haia mes que n'puga donar, sino aquella que davant tendra, e que haia fet tots sos envits o que sia en loch, que no n'puga trobar de exarcia a prestar ne a logar ne per neguna rao, e s'metra tant soptosa-

[1] *Nau*] Esp. 124, chapter clxii. begins here with the Rubric "Nau " o leyn qui primerament sera or- " mejat en port o en plage."

[2] *Nau*] Esp. 124, chapter clxiii. begins here with the Rubric " Nau " o leyn qui primer sera ormejat en " port o en plage."

they have suffered through their fault, or until they have made an arrangement with them or with the managing owner of the ship or vessel for them.

Chapter clv. Of ships moored in front or in the rear.

If a ship or vessel shall be moored first in a port or off a beach, or off a coast, or in a roadstead, every ship and every vessel which shall come in after her ought to moor herself in such form and manner that she cause no damage to that vessel which shall have been first moored. And if she causes damage she ought to compensate and make it good without any dispute. Saving however, if the vessel or the ship, which entered after the other, meets with the misfortune of bad weather so that she cannot moor, and she does some damage to the vessel which has first moored, she is not bound to compensate all the damage, which she may have done at that hour and under those circumstances, for it was not her fault.[1] And accordingly such loss, which has been caused for such reason, ought to be submitted to the judgment of Prudhommes, who are skilled and well versed in the art of the sea.

Chapter clvi. Of the same subject.

A ship or vessel which has been the first moored either in a port, or off a beach, or off a coast, or in a roadstead, or in any other place, if it causes damage to a ship or vessel which shall have come in and entered after her, is not bound to make any compensation for the damage, which she may have caused to the other, for this reason, that if the cable of the vessel which was the first moored failed her, or she had no more to give out beyond what she was riding with, and she had made every effort, or she was in a place where she could not find cables to borrow or to hire on any other

[1] *her fault*] A rule for dividing the damage between the vessels in such a case is laid down in art. 15 of the Rolls of Oleron. By the law of Rome no action would lie, if the collision was accidental. Dig. lib. xiv. tit. 11, fr. 29. Ad legem Aquiliam.

ment lo mal temps, que no s'sia poguda ormeiar; si per aytals occasions, com damunt son dites, li fara aquell dan que desus es dit, no li es tengut de esmena a fer. Mas empero, si la nau o l'leny haura exarcia a prestrech o a loguer, o que fos en loch que l'senyor de la nau la s'pogues pendre, o aquells qui serien en la nau o en lo leny, qui apres de aquella nau o d'aquell leny primer sera ormeiat, en qualsevulla loch que sien, diran a aquells que ells pensen de ormeiar, perco que no l's puguen fer algun dan, que no es bell temps, e han dubte que no s'meta mal temps, e si aquells qui la nau o leny qui primer sera ormeiat, repembra que no s'volra ormeiar; si mal temps se met sobre aco que aquells, qui seran en la nau o en lo leny qui derrer sera ormeiat e entrat, los hauran dit e demostrat, e si la nau, qui primer sera ormeiada, fara dan a aquella qui apres d'ella sera venguda e ormeiada, ella li es tenguda de fer esmenar de tot lo dan que fet li haura per rao de la condicio que per aquells, qui en la nau o leny qui derrer sera entrada, los sera dita e manifestada. Mas empero, si la nau qui primer venguda sera, haura dada tota sa exarcia, e haura fets tots sos envits, jat sia que ella sia en loch que trob recobre de exarcia o no, no li es tenguda de dan que li faca; car negu no s'deu pensar, que si lo senyor de la nau trova exarcia a manlevar o a loguer o a venda, que ell vulla perdre co que ha per fer dan a altre ab sa voluntat, ne algu no u deu creure ne pensar. E aquest capitol fon fet perco que desus es dit.

Capitol clvii. Declaracio

Nau[1] o leny, qui primer sera ormeiada en algun loch, e aquella nau o leny que apres d'ella vendra o

[1] *Nau*] Esp. 124, chapter clxiv. begins here with the Rubric "Nau | "o leyn primer sera ormejat en "port ou en plage."

terms, and the bad weather has set in so suddenly that she can not moor herself securely, if under such circumstances as above mentioned she shall cause any damage as above described, she is not bound to make compensation. But nevertheless, if the ship or vessel is able to borrow or hire cables, or is in a place where the managing owner of the ship may procure them, and those on board the ship or vessel, which shall have moored after the first ship or vessel, in whatever place they may be, shall say to the other ship that they should take care to moor more securely, in order that they may not do any damage, that it is not fine weather, and that they have fears that bad weather will supervene, and if those on board the ship or vessel which shall be the first moored reply that they do not intend to moor more securely; if thereupon bad weather supervenes according to what they have said and showed who were on board the vessel which was the last moored, and if the ship which was the first moored shall do any damage to that vessel which arrived and was moored after her, she is bound to make compensation for all the damage which she may have done to her by reason of the warning, which was announced and declared to them by those on board the ship or vessel which entered the last. But nevertheless if the ship, which first arrived, has given out all her cable and has made every effort, whether she be in a place or not where she can find additional tackle, she is not responsible for the damage which she may do to the other, for no one ought to suppose that if the managing owner of the ship can find tackle to borrow, or to hire, or for sale, that he would lose what he possesses in order to cause damage to another willingly, and no one ought to believe or think so. And this chapter was made for the reasons above said.

Chapter clvii. Explanation of the

If a ship or vessel shall be moored the first in any place, the ship or vessel which shall arrive and enter

del precedent.

entrara, se deu ormeiar en guisa o en manera que no li faca dan, e si li n'fa, es li n'tengut de tota esmena a esmenar segons que en lo capitol desusdit es contengut, esclarit, e certificat. Mas empero, axi es a entendre que aquella nau o leny, qui primer sera ormeiat, no mudas ancores ne prois que tengues de dins ne de fora, pusque la nau o leny qui apres de ella sera entrat se sia ormeiat. E si ell les mudara o les cambiara, apres que aquella nau derrera sera ormeiada, e aquella nau pendra algun dan que primer sera ormeiada, aquella nau, que apres d'ella sera entrada, no li es tenguda de tot aquell dan esmenar, mas de partida, perco car ella haura mudades ancores e prois de dins e de fora. E aquell dan que aquella nau que derrer sera ormeiada haura fet a aquella que primer sera ormeiada, deu esser mes en poder de savis homens e certs qui sien e sapien be e diligentment de la art de la mar, e ells segons lur conciencia e segons consell que trobaran dels promens de la mar, ells son tenguts que l's ho deven partir be e diligentment, perco que mal ne traball no pusca esser ne crexer entre los senyors de les naus o del lenys, ne encara entre l's altres que haguessen algun contrast entre ells. Mas, si la nau qui primer sera ormeiada, no mudara ne cambiara dins ne de fora ancores ne prois, aquella nau, que derrer sera entrada, li es tenguda de tot lo dan que li fara de esmena a fer, tot axi com en lo capitol desusdit es esclarit e certificat. Empero, si aquella nau que derrer entrada sera ormeiada, e apres que aquella sera ormeiada mudara o cambiara ancores o prois; si per

after her, ought to moor in form and manner that it may cause no damage, and if it does damage, it is bound to make full compensation according to what is contained, declared, and made clear in the preceding chapter. But nevertheless it is to be understood that the ship or vessel which has been the first moored, has not shifted the anchors or cables by which it rides, neither within nor without the ship, after the other ship or vessel which entered after her shall have been moored. And if she shall have shifted or changed them after the other ship has moored behind her, and the ship which was the first moored shall suffer any damage, the ship which shall have entered last, is not bound to compensate all the damage, but only a part, because the other ship has shifted her anchors or cables within and without. And the damage which that vessel, which shall have been moored last, has caused to the vessel which was the first moored ought to be submitted to the judgment of skilled and experienced men, who are well and accurately versed in the art of the sea; and they, according to their conscience and according to the counsel which they shall obtain from the Prudhommes of the Sea,[1] are bound to divide the damage well and diligently, in order that no evil feeling nor difficulty may arise or grow up amongst the managing owners of the ships or vessels, nor further amongst the others, who may have any dispute with them. But if the ship which shall be moored the first, shall not shift nor change within nor without her anchors or cables, the ship which has entered the last, is bound to make compensation for all the damage which it shall cause, precisely as it has been declared and made clear in the preceding chapter. Nevertheless, if that ship which entered last shall be moored, and after she shall be moored shall shift or change anchors or cables, if by

preceding chapter.

[1] *Prudhommes of the Sea*] These would appear to be certain magistrates, who had jurisdiction in maritime matters, under whose direction the skilful navigators assessed the damages.

culpa d'aquelles ancores o prois, que mudats o cambiats seran, aquella nau, qui primer sera ormeiada e entrada, sostendra algun dan, aquella nau, que apres de ella sera entrada e ormeiada, li es tenguda de tot aquell dan, qui fet li haura, a esmenar per co com haura mudades e cambiades les ancores o prois. Mas si ella no cambiara ancores ne prois e aquella nau o leny, qui primerament sera ormeiada, les mudara e les cambiara pus intra o pus fora, e aquella nau que derrera entrada e ormeiada sera no s'muda, no li es tenguda de esmena a fer sino tant solament en axi com en lo capitol desusdit es stablit e certificat. Mas empero, si aquella nau que primer sera entrada o ormeiada pendra algun dan sens culpa de aquella que apres sera entrada e ormeiada, no li es tenguda de alguna esmena a fer per dan que ell prengues, pus que sens culpa d'aquella nau, que apres d'ella sera entrada e ormeiada l'agues pres. E fon fet perco aquest capitol, que quascun se guart ia que fara e com se ormeiara, que segons que ell fara e se ormeiara, aquell guardo que desus es dit li n'pertanyera. Perque quascu se guart que faca co que a fer haura be e saviament, perco que entre ells ne altres no puga haver algun contrast per lur culpa.

Capitol clviii. De ormeiar.

Si una[1] nau o dues o quantitat de naus o de lenys entraran en port o en sparagol o en plaia o en altre loch, e entraran ensemps e s'ormeiaran, quascun d'ell se deu tan luny ormeiar del altre, que pur res no poguessen fer algun dan la un a l'altre. Empero, si per ventura ells estan en algun dels lochs sobredits se metra mal temps, quascun d'ells se deu ormeiar be e gint, e fer tot son poder, perco que algu d'ells no puga pendre algun dan; e encara mes perco que lo un

[1] *Si una*] Esp. 124, chapter clxv. commences here with the Rubric "Si una nau o dues, o quantitat de naus."

fault of her anchors or cables, which shall be shifted or changed, the ship which entered and was moored the first, shall sustain any damage, the ship which entered and was moored after her is bound to compensate her for all the damage, which she may have caused to her because she has shifted or changed her anchors or cables. But if she shall not change anchors nor cables, and the ship or vessel, which was first moored, shall shift them or change them more within or more without, and the ship which entered and was moored the last does not shift them, she is not bound to make any compensation except so far only as has been established and made clear in the preceding chapter. But nevertheless if that ship, which shall have entered and been moored the first, suffers any damage without any fault of the vessel which entered and was moored after her, the latter is not bound to make any compensation to her for the damage which she has suffered, since she will have sustained it without any fault of that vessel which entered and was moored after her. And this chapter was made that every one may beware what he does and how he moors his vessel, for according to what he does and how he moors his vessel the warning above said will attach to him. Wherefore each person should beware that what he has to do, he does well and skilfully, in order that between him and others there may be no dispute from his fault.

Chapter clviii. Of mooring.

If a ship or two or a number of ships or vessels shall enter into a port, or a roadstead, or a creek, or any other place, and shall enter it together and shall moor, each ought to moor at such a distance from the others that they cannot in any way do any damage to one another. Nevertheless, if by chance whilst they are riding in such a place bad weather overtakes them, each of them ought to moor herself well and strongly, and do all in her power that not one of them shall suffer any damage, and still more that none of them shall do damage to

no pusca fer dan al altre. E si per ventura, stant aquell mal temps, a alguna des naus o lenys falra exarcia, e ir n'a sobre los altres e fer los ha dan, si aquella nau o leny a qui l'exarcia sera fallida haura fet tot son poder de ormeiarse, e la exarcia que ell havia era bona e suficient a aquella nau o leny, e encara a molt major que aquell no es, aquell dan que fet sera no deu esser esmenat a aquell qui pres l'aura, pus que per culpa d'aquell de qui la nau o leny sera, a qui la exarcia sera fallida, no sera fet: encara mes, per altra rao, perco, car ell haura fet tots sos envits e tot son poder de ormeiarse: encara mes, que aquella exarcia que fallida li sera era bona e suficient a aquella nau o leny e a major que aquell no era. E axi per les raons desusdites, no es tengut de esmena a fer de aquell dan que fet haura a algu. Empero, si aquell senyor d'aquella nau o leny, a qui la exarcia sera fallida, haura mes flix que no sera ormeiat axi com fer deguera e poguera, e la exarcia que ell haura no sera suficient a aquella sua nau o leny, ne encara a menor que aquella no es, si per aquestes raons desusdites aquella sua nau o leny fara dan algu, ell n'es tengut de tot aquell dan a restituir e esmenar a aquell qui suffert o sostengut l'aura, per culpa de flix o de mala exarcia que ab ell se aportava. Perque, tot senyor de nau o leny se guart e s'deu guardar que no meta flix a ormeiarse e que no port ab si exarcia que no sia suficient, perco que la pena ne condicio no li pusca esser desus posada que desus es dita.

the other. And if by chance, during such bad weather, the tackle of any of the ships or vessels shall fail her, and she shall drive against the others and do them any damage, if the ship or vessel of which the tackle has failed has done all in her power to moor herself, and the tackle, which she had, has been good and sufficient for that ship or vessel and for one still larger than she is, the damage which has been done shall not be made good to the vessel which has sustained it, because it has not been caused by the fault of him to whom the vessel, of which the tackle has failed, belongs, still more for another reason, because she has done all in her power to moor herself: still further, because the tackle which has failed was good and sufficient for that ship or vessel and for one larger than her. And accordingly for the reasons above said she is not bound to make compensation for the damage which she has caused to any vessel. Nevertheless, if the managing owner of that ship or vessel, of which the tackle has failed, shall have put out a cable [1] by which she was moored less strongly than she ought or could have been, and the tackle which he had has not been sufficient for his ship or vessel nor even for a smaller one than her, if for those reasons above said his ship or vessel shall cause any damage, he is responsible to make good and compensate all that damage to those who have suffered or sustained it, by fault of weak or of bad tackle, which he has brought with him. Wherefore every managing owner of a ship or vessel must beware and ought to take care, that he does not use weak tackle to moor himself with, and that he does not carry cables which shall be insufficient, in order that the penalty and conditions aforesaid may not be imposed upon him.

[1] *a cable*] The phrase "hi metra fiix" is used in a similar sense in chapter clxxxii.

Capitol clix. De stiba de botes.

Senyor[1] de nau o leny qui logara stiba de botes a viatge cert o a temps sabut, e lo logador diu al senyor de la nau, que ell no leu ne faca levar ni prenga ni faca pendre aquell stiba, si donchs no li paga lo loguer, e si la pren que vaia a risch e a ventura del senyor de la nau: e si sobre aquesta condicio la se n'porta que l'logador li haura dita, e l'estiba se pert, lo senyor de la nau li es tengut de esmenar la stiba, o l'preu de aquella, e encara mes lo loguer que haura empres ab lo logador. Encara mes, si lo senyor de la nau te mes la stiba que no haura empres ab lo logador e la portara en altre viatge, lo qual no sera empres entre l'logador e lo senyor de la nau, si l'estiba se pert en aquell temps o en aquell viatge, lo qual entre ells empres no sera, lo senyor de la nau sia tengut de esmenar l'estiba de les botes al sobredit logador, e lo preu de aquelles e tot lo loguer de aquella, multiplicant de viatge cert o del temps empres al viatge o al temps, que entre ells no sera stat empres. Encara mes, si lo senyor de la nau la jugava o la baratrava o la venia o s'perdia per sua culpa, per aquella rao major que desus es dita. Empero, si lo logador no posara aquestes condicions desusdites al senyor de la nau, com

[1] *Senyor*] Esp. 124, chapter clxvi. commences here with the Rubric "Senyor de nau o de leyn qui logera stiba de botes."

Chapter elix. Of an outfit of casks.

If a managing owner of a ship or vessel shall hire an outfit[1] of casks for a given voyage or a known time, and he who lets the casks shall say to the managing owner of the ship that he must not put them on board nor cause them to be put on board, nor take them away nor cause them to be taken away, unless he has paid for the hire of them, and if he takes them on the terms that they are to go at the risk and at the hazard of the managing owner of the ship, and if upon these conditions which he who lets the casks has dictated, the managing owner of the ship shall carry them away, and the casks are lost, the managing owner of the ship is bound to make good the casks, or the price of them, and still more the hire of them which he has agreed to with the person who has let them. Still more if the managing owner of the ship detains longer the casks than he had agreed for with the person who has let them, and shall carry them on a second voyage which shall not have been agreed upon between the owner of them and the managing owner of the ship, and if the casks be lost at that time or on that voyage which has not been agreed upon between them, the managing owner of the ship is bound to make good the complement of casks to the said owner of them and the price of them and all the hire of them calculating the voyage which shall not have been agreed upon between them in proportion to the certain voyage and the time agreed upon. Still more, if the managing owner of the ship shall have gambled with them, or swapped them away, or sold them, or has lost them by his own fault, for the greater reason as above stated. Nevertheless, if the owner of the casks has not imposed the conditions above mentioned upon

[1] *an outfit*] Properly a stowage of casks. It would appear to have been the practice for vessels engaged in the wine trade to be fitted out with casks stowed on board, into which the merchants poured their wine from skins or otherwise, and out of which the wine was pumped or otherwise landed at the port of destination.

ell logara o pendra l'estiba, e l'estiba se perdra, sera perduda al dit logador, pag lo loguer o no lo senyor de la nau, ab que no s'perdra per culpa, axi com damunt es dit, ne la condicio que desus es dita li hagues posada lo logador, salvo empero lo loguer: perdra s'la stiba o no s'perda, totavia sia salvo lo loguer al logador. E si l'estiba se pert par les condicions desusdites, lo senyor de la nau sia tengut de esmenar la dita stiba. E si lo senyor de la nau e lo logador no se n'poden avenir, sia mes en poder de dos bons homens boters, qui haguessen vista aquella stiba, e que fossén be del offici de la boteria, e qualsevulla cosa que aquells diguessen per lur sagrament, que allo sia tenguts de esmenar lo senyor de la nau al dit logador, salvo empero que l'loguer de la stiba deu totavia esser pagat.

Capitol clx. De carrech de vi.

Si algun[1] senyor de la nau o leny haura nolieiada la sua nau o lo seu leny a alguns mercaders, si aquella nau o aquell leny devra o haura a carregar de vi, e si lo senyor de la nau o del leny sera tengut de donar l'estiba als mercaders per tot lo carrech de la nau o del leny, deu fer en axi que deu fer bella l'estiba, e deu la fer omplir a sos mariners o a qui s'volra, ans que la meta en sa nau o en son leny, e axi plena d'aygua deu la mostrar als mercaders e a home per ells, e dir encara en axi, e fer dir a aquells mercaders qui y son o seran, e la ja l's es semblant aquella stiba esser bona o si l's sembla stanya e si

[1] *Si algun*] Esp. 124, chap. clxvii begins here with the Rubric "Si algun senyor de nau o de leyn aura noliejada la sua nau."

the managing owner of the ship, when he hired or took the casks, and the casks are lost, they shall be lost to the said hirer, whether or not the managing owner of the ship has paid the hire, unless they have been lost by his fault as above said, and unless the owner of the casks has imposed the conditions above said, saving always the hire; whether the casks should be lost or not, the hire is always saved to the owner of them. And if the casks are lost under the conditions above mentioned, the managing owner of the ship is bound to make compensation for them. And if the managing owner of the ship and the owner of the casks cannot arrange the matter, let it be submitted to two honest men[1] who are coopers, who have seen the casks, and who are well skilled in the business of cooperage, and whatever they shall decide upon their oath, the managing owner of the ship shall pay as compensation to the said owner of the casks, saving always the hire of the casks which ought always to be paid.

Chapter clx. Of a cargo of wine.

If any managing owner of a ship or vessel has let for freight his ship or vessel to certain merchants, if that ship or vessel ought and has to carry wine, and if the managing owner of the ship or vessel is bound to provide casks for the merchants to hold the cargo of the ship or vessel, he ought to do thus: he ought to clean the casks and fill them by his mariners or other persons whom he may choose, before he puts them on board of his ship or vessel, and ought to show them full of water to the merchants or their agent, and ask or cause to be asked of those merchants who shall be there, if it appears to them that the casks are good, and if they seem to them to be staunch, and if

[1] *honest men*] It may be that the prudhommes of the guild of coopers is here meant, but the phrase "boni homines" is ambiguous, and may mean simply "two honest men who are coopers by trade."

volen que ell la meta en la nau. E si los mercaders o hom per ells diran, que la tendran per stanya e que la meta o la faca metre en la nau o en lo leny, si los mercaders la ompliran o la faran omplir de vi, pus que stibada sera en la nau, si aquella stiba se exira o vessara alguna quantitat del vi, que ells mesa hi hauran o feta metre, lo senyor de la nau o leny no l's n'es tengut de alguna esmena a fer, perco car no es sa culpa; e encara mes, perco car ell la l's mostra plena d'aygua; encara mes, perco com ab voluntat d'ells o de hom per ells la ha mesa en la nau; e ells o hom per ells la tengueren o digueren que era stanya. Mas, los mercaders li son tenguts de pagar tot lo nolit que promes li hauran, e axi be del vi qui vessat sera com d'aquell qui sera salvat, pus que per culpa d'ell no s'sera vessat ne perdut. Empero, si lo senyor de la nau devra donar la stiba als mercaders, com desus es dit, e ell ne hom per ell no la mostrara als mercaders ne a hom per ells, e si la tendran per stanya o no, e sens vista d'ells o de hom per ells ell la metra en la nau o leny o la fara metre, si los mercaders sostendran dan algu per culpa d'aquella stiba que ell mostrada no haura; lo senyor de la nau o leny los es tengut de esmena a fer, e los mercaders no li son tenguts de nolit a pagar d'aquell vi qui vessat sera, perco, car ell no l's mostra la stiba si era stanya o no. Empero si lo senyor de la nau o leny no n'dara, ne sera de stiba tengut a donar a aquella mercaders qui nolieiat l'auran, e los mercaders hauran

they wish him to put them on board. And if the merchants or their agent say that they consider them to be staunch, and that he should put them or cause them to be put on board of the ship or vessel, if the merchants fill them or cause them to be filled with wine, as soon as they are stowed in the ship, if those casks leak or spill [1] any quantity of the wine, which they have put or caused to be put into them, the managing owner of the ship or vessel is not bound to make any compensation, for it is not his fault, and still more because he showed the casks full of water; still more because he put them on board with the assent of themselves or of their agent, and they or their agent held and declared that they were staunch. But the merchants are bound to pay to him all the freight which they have promised to him, as well of the wine which shall have been spilt as of the wine which shall have been preserved, since it was not spilt or lost by his fault. Nevertheless, if the managing owner of the ship ought to provide casks for the merchants as above said, and neither he nor his agent has shown them to the merchants or their agent, in order to ascertain if they hold them to be staunch or not, and without any inspection on the part of the merchants or their agent he puts them or causes them to be put on board the ship or vessel, if the merchants sustain any loss from the defects of the casks which he has not shown to them, the managing owner of the ship or vessel is bound to make compensation, and the merchants are not bound to pay freight for that wine which shall have escaped out of them, because he has not shown the casks for them to see if they were staunch or not. Nevertheless, if the managing owner of the ship or vessel shall not provide and is not bound to provide casks for the merchants who have hired it

[1] *spill*] Probably from the motion of the ship when at sea.

o devran haver l'estiba; sia stanya o no sia stanya, que ves lo vi tot o partida, los mercaders son tenguts le nolit a pagar de aytant com la nau sua o lo seu leny haura mes, tot axi com ab ell ho hauran empres, sens tot contrast. E per lo que desus es dit, fon fet aquest capitol.

Capitol clxi. De exarcia logada.

Senyor[1] de nau o leny qui logara exarcia per anar en viatge, e aquella exarcia que logada haura se pert sens culpa d'ell, no es tengut de res esmenar a aquell qui logada la li haura, sino tant solament lo loguer qui entre ells empres sera. Empero, si la exarcia se perdra per culpa del senyor de la nau, sia tengut ell de fer esmena a aquell qui logada la li haura, tot aytant com la exarcia valega o valia en aquell temps que ell la pres o la loga, o de donar aytanta exarcia com aquella era al temps que ell la pres. Encara mes, si aquella exarcia se trencara, o s'guastara, per culpa del senyor de la nau, ell sia tengut de esmena a fer axi com desus es dit, mas si s'trencara o s'guastara sens culpa d'ell, no sia tengut de res esmenar, sino axi com desus es dit. Salvo empero, si aquell qui la exarcia logara hi posara preu o condicio alguna, e lo senyor de la nau rebra aquella exarcia sots les condicions que aquell si posara, lo senyor de la nau sia tengut de donar tot aquell preu que l'logador dit li haura, o de retre aytanta exarcia com aquella, e que valgues tant com aquella. Empero, sia en voluntat del logador si pendra diners o exarcia. Empero, si lo senyor de la nau portara aquella exarcia en altre viatge, e no tan

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[1] *Senyor*] Esp. 124, chapter clxviii. commences here with the Rubric "Seynor de nau o de leyn | "qui logara exarcia que logada | "aura."

for freight, and the merchants shall have or ought to have their own casks, whether they be staunch or not, whether the wine escapes out of them in whole or in part, the merchants are bound to pay the freight for as much wine as has been put on board the ship or vessel according to the terms upon which they have agreed with him without any dispute. And this chapter was made for reason which is above said.

Chapter clxi. Of ship's apparel hired.

If a managing owner of a ship or vessel hire ship's apparel[1] to go on a voyage, and the apparel which has been hired is lost without his fault, he is not bound to make any compensation to the person who has let it to him, except only the hire which has been agreed upon between them. Nevertheless, if the apparel is lost by the fault of the managing owner of the ship, he is bound to make compensation to him who has let it to him, for all the time that he has had or hired it, and to replace as much apparel as there was at the time when he took it. Still more, if that apparel is broken or spoilt by the fault of the managing owner of the ship, he is bound to make compensation as above said, but if it is broken or spoilt without his fault, he is not bound to make any compensation except as above said. Saving, however, if he who let the apparel has imposed a price or condition, and the managing owner of the ship shall receive that apparel under the condition which he has imposed, the managing owner of the ship is bound to give all that price which the hirer has named, and to replace an equal quantity of apparel and such as is of equal value with that which he has hired. Nevertheless, it shall be in the option of him who let the apparel to accept money or apparel. Nevertheless, if the managing owner of the ship shall carry that apparel on a second

[1] *ship's apparel*] such as spars, sails, &c., including more than mere tackle.

solament en aquell que haura empres ab aquell qui la exarcia haura logada, e la exarcia se perdra en aquell viatge qui entre ell no sera empres, en qualsevulla guisa que la exarcia s'perdra o s'guastara, lo senyor de la nau sia tengut de donar e de retre aytanta exarcia com aquella, o lo preu que aquella valia al temps que ell la pres ho posat hi sera. E lo loguer sia pagat del viatge empres, multiplicant a aquell qui no sera empres, o en qualsevulla guisa sia de la exarcia, totavia sia pagat lo loguer.

Capitol clxii. De exarcia manlevada.

Senyor [1] de la nau o leny qui manlevara exarcia e s'perdra o s'guastara, lo senyor de la nau qui manlevada la haura, es tengut de retre e de donar aytanta de exarcia com aquella que manlevada haura, o lo preu que aquella valia al temps que ell la manleva; e sia en voluntat de aquell qui prestada la li aura de pendre exarcia o diners. Empero, en qualsevulla guisa que la exarcia se perdra o s'guastara que manlevada sera, deu esser restituida a aquell qui prestada la haura, e lo senyor de la nau qui manlevada la haura no hi pot metre negun contrast. E fon fet perco aquest capitol, car molt senyor de nau o de leny manlevara exarcia qui s'perdra o s'guastara, e com aquell qui prestada la haura la li demanara, ell li metra contrast. E per aquestes raons desusdites senyor de nau no pot ne deu contrastar ab aquell qui la exarcia li haura prestada.

Capitol clxiii. Com exarcia trobada en ribera per necessitat pot esser presa.

Tot senyor [2] de nau o leny pot pendre exarcia que trob en ribera, ab que la haia mester a sa nau o a son leny a ormeiar, que haia por de mal temps o que sia in loch perillos, ab que aquella exarcia qui en la ribera sera no faes fretura a aquell de qui sera, que la hagues

[1] *Senyor*] Esp. 124, chapter clxix. begins here with the Rubric "Senyor de nau ho de leyn qui manlevara exarcia."

[2] *Tot senyor*] Esp. 124, chapter clxx. begins here with the Rubric "Tot senyor de nau o de leyn pot pendra exarcia que trob."

voyage, and not merely on that voyage for which he agreed, and the apparel should be lost on that voyage which was not agreed to between them, in whatever way the apparel may have been lost or spoilt, the managing owner of the ship is bound to give and to restore as much apparel as that was, or the price that it was worth at the time when he took it, or that was then fixed. And the hire shall be paid of the voyage agreed upon in addition to that for the voyage which was not agreed upon, and in whatever way the apparel shall be dealt with, under all circumstances the hire must be paid.

Chapter clxii. Of apparel borrowed.

If a managing owner of a ship or vessel shall borrow apparel, and it shall be lost or spoilt, the managing owner of the ship who has borrowed it is bound to replace and to give back as much apparel as that which he has borrowed, or the price which that was worth at the time when he borrowed it; and it shall be at the option of the person who has lent it to take apparel or money. Nevertheless, in whatsoever manner the apparel which has been borrowed shall be lost or spoilt, it ought to be restored to him who has lent it, and the managing owner of the vessel, who has borrowed it, cannot in any way object. And this chapter was made because many a managing owner of a ship or vessel will borrow apparel, which will be lost or spoilt, and when he, who has lent it, shall claim it, the borrower will dispute the fact. And for the reasons aforesaid a managing owner of a ship may not, and ought not, to dispute with him who has lent apparel to him.

Chapter clxiii. When apparel found on the beach may be taken from necessity.

Every managing owner of a ship or vessel may take apparel which he finds on the beach, when he has need of it in order to moor his ship or vessel when he has fear of bad weather, or when he is in a perilous place, provided the apparel which is on the beach is not required by him to whom it belongs, and that he has not need of it

ops aytambe a son leny a ormeiar. E si lo senyor de la exarcia hi es, deula li demanar; e si lo senyor de la exarcia no y era, pot la pendre, ab que encontinent que presa la haura que ho faca a saber a aquell hom, si l'troba, o a home per ell, e si ell ne vol pendre servey, qui el li deu fer, perco car haura presa la sua exarcia menys de voluntat sua, que per als no. Empero, lo senyor de la nau qui la exarcia haura presa, la deu tornar en aquell loch on levada la haura, encontinent que l'mal temps sera passat. E si aquell de qui la exarcia sera, ne sostendra dan o messio, lo senyor de la nau qui presa la haura ho deu tot pagar. Encara mes, si la exarcia se perdra o s'guastara en qualque guisa, lo senyor de la nau, qui presa la haura, deu retre e donar aytanta de exarcia com aquella que ell presa haura, o lo preu que aquella valia al temps que ell la pres, a aquell de qui la exarcia sera; e aco diu fer menys de tot contrast. E si aquell, de qui la exarcia sera, no volra cobrar la exarcia per aquella que perduda sera, e vol pendre diners, si ab dos se n'volen avenir, sino, sia mes en poder de dos bons homens de mar qui haguessen vista aquella exarcia: e co que fos dit per aquells dos bons homens, allo sia seguit, axi que la una part ne l'altra no y puga contrastar. E fon fet perco aquest capitol que l'senyor de nau o de leny se pot pendre exarcia, menys d'aquell de qui sera, a sa nau o son leny a ormeiar; que si lo senyor de la nau havia a cercar lo senyor de la exarcia, seria s'mes per ventura tan mal temps, que la nau o l'leny e tot co

equally to moor his own vessel. And if the managing owner of the apparel is present, he ought to ask him for it, and if the managing owner of the apparel be not there, he may take it, provided immediately after he has taken it he makes it known to the managing owner, if he finds him, or to his agent; and if the managing owner wishes to have a payment for it, he ought to make the payment, because he has taken it without his consent, and not otherwise. Nevertheless, the managing owner of the ship who has taken the apparel ought to return it to the place, whence he has taken it, immediately after the bad weather has passed away. And if he to whom the apparel belongs sustains therefrom any loss or expense, the managing owner of the ship, who shall have taken it, ought to pay it all. Still more, if the apparel shall be lost or spoilt in any manner, the managing owner of the ship, who shall have taken it, ought to replace and give back as much apparel as that which he has taken, or the price which that was worth at the time when he took it, to him to whom the apparel belongs, and this he ought to do without any dispute. And if he, to whom the apparel belongs, shall not be willing to receive apparel to replace that which shall be lost, and wishes to receive money, the two parties should arrange the matter; if not, let it be submitted to the award of two Prudhommes of the Sea,[1] who have seen the apparel, and let that be followed which those two Prudhommes shall award, so that neither the one party nor the other may object in any respect. And this chapter was made in order that the managing owner of a ship or vessel may take apparel for his ship or vessel to moor with, without the consent of him to whom it belongs, for if the managing owner of the ship had in all cases to search for the managing owner of the apparel, such bad weather might by chance supervene that the ship or vessel and everything within

[1] *Prudhommes*] The phrase "bons homens de mar" seems to signify in this place the same class of persons who in chap. clvii. are designated "Promens de la Mar."

que dins seria iria a condicio de perdre s'ans que ell hagues trobat lo senyor. E per aquestes raons desusdites, senyor de la nau o leny se pot plavir de exarcia que en ribera sera, menys d'aquell de aqui sera, ab qué lo senyor de la nau la haia ops, per les condicions que damunt son dites.

Capitol clxiv. De exarcia presa o manlevada.

Senyor [1] de nau o leny qui manlevara o pendra exarcia de ribera per la sua nau o leny ormeiar, si ell la sen' porta en viatge o en viatges, menys de sabuda e menys de voluntat de aquell de qui sera: si aquell de qui la exarcia sera ne sostendra algun damnatge, que haia a logar exarcia a ops de la sua nau o de son leny, perco com se n'hauran portada la sua, aquell qui portada la se n'haura, deu pagar tot lo dan e tota la messio e tot greuge, que aquell ne sostendra. Encara, aquell qui la exarcia se n'haura portada, deu pagar lo loguer d'aquella exarcia que axi se n'haura portada, de aquell de qui sera, e sia a son pler d'aquell de qui sera la exarcia, de pendre tot aytal loguer com se volra; e aquell deu lo y donar, menys de tot contrast. Encara mes, sia a son pler d'aquell de qui es la exarcia o de cobrar la, u lo preu que aquella valia: e ell que n'sia cregut per son sagrament, que aquell qui axi se n'haura portada aquella exarcia, no y pusca res contrastar, ne home per ell. Encara mes, sia a voluntat de aquell de qui la exarcia sera que l'ne pot metre en poder de senyoria e demanar per ladronici. E si aquella exarcia si perdra o s'gastara, aquell qui levada la haura,

[1] *Senyor*] Esp. 124, chapter clxxi. begins here with the Rubric "Senyor de nau o de leny que manlevera o pendra exarcia de ribera."

it would be in peril of being lost before he could find the managing owner of the apparel. And for the above mentioned reasons the managing owner of a ship or vessel may employ the apparel which shall be on the beach without the previous consent of him to whom it belongs, provided the managing owner of the ship has need of it [1] under the circumstances above mentioned.

Chapter clxiv. Of apparel taken or borrowed.

If the managing owner of a ship or vessel, who shall borrow or take apparel on the beach for his ship or vessel to moor with, shall carry it away on a voyage or voyages without the knowledge and without the consent of him to whom it belongs, if he to whom it belongs shall thereby sustain any damage, or has to hire apparel for the wants of his own ship or vessel, because his apparel has been carried away, he who has carried it away ought to pay all the loss and all the expenses, and all the damage which the other party has sustained. Further, he who has carried off the apparel ought to pay the hire of that apparel, which he has carried away, to him to whom it belongs, and it shall be at the pleasure of him to whom the apparel belongs to claim as much for the hire of it as he pleases, and he who has carried it off ought to pay the sum claimed without any dispute. Still more it shall be at the pleasure of him to whom the apparel belongs either to have it replaced or to have the price which it was worth, and he shall be believed upon his oath, for he who shall have so carried away the apparel cannot in person nor by his agent raise any objection. Still more, it shall be at the discretion of him, to whom the apparel belongs, to lodge a complaint before the local authorities, and to sue the party for theft. And if that apparel be lost or spoilt, he who has carried it away shall be bound to indemnify him to whom

[1] *need of it*] Analogous provisions as to the use of capstans, levers, &c., for launching or hauling up vessels on the beach are set out in ch. clxxxviii.

sia tengut de fer esmena a aquell de qui sera, tot en aquella guisa que ell la li volra prear, que li n'dega aytant donar, ab que aquell de qui es la exarcia ho diga per son sagrament. E fon fet perco aquest capitol, car molt senyor de nau se n'portaria exarcia d'altre, si aquestes condicions, que desus son dites, no eren posades per justicia a les parts.

Capitol clxv. De comanda a viatge cert.

Mercader,[1] ne mariner, ne algun altre qui pendra comanda a viatge cert, o en aquell loch sabut se pendra tota la comanda, ab que no fos culpa del comandatari, no es tengut de retre res, ne de esmenarli a aquell qui comanada la haura. Mas empero, si lo dit comandatari la portara en altre viatge o en altre loch menys de aquell, que empres haura ab aquell qui la comanda li haura feta, si s'pert la comanda, lo comandatari es tengut de tot a retre a aquell qui la comanda li haura feta, pusque ell la haura aportada en altre loch o en altre viatge, lo qual no haura empres ab ell. Encara mes, si lo dit comandatari portara la dita comanda en viatge o en loch, on no haura empres ab lo dit comanador e s'y guanya, tot lo guany que ab la dita comanda fara, deu donar a aquell qui la dita comanda

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[1] *Mercader*] Esp. 124, chapter clxxii commences here with the Rubric "Mercader o mariner, ne nagun altra que pendra comandes."

it belongs to the full extent of that price which he shall put upon it, and he shall be bound to pay him as much, provided that he, to whom the apparel belongs, declares the price upon his oath. And this chapter was made because many a managing owner of a ship will carry away the apparel of another, if the conditions above stated were not imposed by justice on the parties.

Chapter clxv. Of a commission for a given voyage.

If a merchant or mariner or any one else, who accepts a commission[1] for a given voyage or to a known place, loses all that which is committed to his charge without any fault on his part, he is not bound to replace anything nor to compensate him, who has entrusted him with the commission. But nevertheless, if the said commissioner shall carry the goods committed to his charge upon another voyage or to another place from that, which was agreed upon with him who entrusted the commission to him, if the goods entrusted to him are lost, the commissioner is bound to make good everything to him who has intrusted him with the commission, since he has carried the goods to another place and on another voyage, which had not been agreed upon. Still more, if the said commissioner shall carry the goods committed to his charge on a voyage and to a place which has not been agreed upon with the person who committed them to him, and shall gain money, all the gain which he shall make with the goods committed to him he ought to give

[1] *a commission*] It is very difficult to select any words in the English language which correspond accurately with the Catalan word "Comanda" and its correlatives, comanador, comandatari, &c. The "comandatari" was, in fact, an agent whose principal was the comanador, and the subject matter of his agency was the "comanda." "Supercargo" is probably the term nearest in its meaning to "comandatari," who was in fact a travelling "factor," but the "comanda" was not necessarily limited to cargo, it might be the ship itself, when the owners committed it to the charge of a master, who was not the managing owner. "Mandate" on the other hand, from the Latin mandatum, is not applicable, for the contract of "mandatum" was to be fulfilled gratuitously.

li haura feta, e no se n'deu res tenir, sino tan solament co que empres haura ab lo dit comanador damunt dit; e si ells si n'rete, esne tengut axi com si lo y emblava de sa caixa. E si la comanda o lo guany fet ab aquella se perdra en aquells lochs, en los quals lo comandatari es tengut de retre e de donar a aquell qui la comanda li haura feta, axi be es tengut de tot lo guany, com de la comanda que presa haura.

Capitol clxvi. De empediment a comanda.

Comandataris[1] qui portaran comandes en viatge o en loch sabut, e seran partits de alla on la comanda hauran rebuda, e seran en aquell loch qui hauran empres ab aquells qui les comandes hauran fetes, e stant en aquell loch venia occasio de penyores o empediment de les senyories, o y vendrien lenys armats de enemichs, e si per qualsevol de aquestes condicions que desusdites son se perdra la comanda, lo comandatari no es de res tengut a fer esmena a aquells qui les comandes li hauran fetes. Mas empero, si estant al viatge, ans que en aquell loch fosen on anar devien, havien sabuda de aquelles coses que desus son dites, et ells ne eren certs que ver fos, e ells hi entraven, e la comanda se perdia, los comandataris son tenguts de retre e de esmenar tota la comanda que aquells los haurien feta. E si per ventura stant en lo dit viatge ans que ells fossen en lo sobredit loch havien certenitat de les occasions desusdites, e los comandataris se podien avenir ab lo senyor de la nau o del leny, en que ells serien, per anar en altre loch hon no haguessen paor de les condicions desusdites, car comandataris son dits mercaders entre los senyors de les naus o lenys, e lo senyor

[1] *Comandataris*] Esp. 124, chapter clxxiii. commences here with the Rubric "Comandataris qui portaran comandes en viatge o en loch sabut."

to him who entrusted him with them, and he ought to retain nothing except only that which he shall have agreed upon with the person who committed them to him; and if he otherwise retains them, he is responsible for them precisely, as if he had stolen them from his chest. And if the commission or the gain made with it shall be lost in the place, in which the commissioner is bound to restore it and to give account to him who has entrusted him with the commission, he is responsible for the money gained equally, as for the goods which he has received on commission.

Chapter clxvi. Of impediments to a commission.

If a commissioner, who carries commissions with him on a voyage or to a known place, shall have set out from the place where he received the commissions, and shall be in the place which has been agreed upon with the person who has given him the commissions, and whilst he is in that place an occasion for reprisals arises, or for an embargo of the authorities, or armed ships of the enemy come there, and if from any of the above circumstances the goods committed to him are lost, the commissioner is not bound to make any compensation to those who have intrusted to him the commissions. But nevertheless, if during the voyage, before they arrived at that place where they ought to go, they have known of those things which are above mentioned, and they were certain that it was true, and they have entered the port, and the goods committed to them have been lost, the commissioners are bound to replace them and to compensate [the owners] for all the goods which have been committed to them. And if by chance whilst they are on the said voyage, before they have arrived at the said port, they have become certain of the above-said occurrences, the commissioners may arrange with the managing owner of the ship or vessel, in which they are, to go to another place where they have no fear of the circumstances above mentioned, for commissioners are regarded as merchants with respect to managing owners of ships or vessels, and the managing owner of the ship

de la nau se avendra ab los dits mercaders, jat sia aco que aquell loch, que empendran lo senyor de la nau e los comandataris, no sia empres ab aquells qui la comanda hauran feta; perco, per les tres raons damunt dites tot comandatari pot portar la comanda en altre loch, pusque sia per salvar les comandes que ab si portara e no per alguna altra rao, e aco deu esser fet menys de tot frau. E encontinent que ells hauran fet port en aquell loch, que estant en lo viatge hauran empres ab lo senyor de la nau, los dits comandataris deven vendre e esmercar totes les comandes que ells tendran, e tornar a aquells e retre la comanda que feta l's hauran. Et si en aquell loch, on per aytal rao com desus es dita sera, se perdra la dita commanda, jat sia aco que aquel loch no fos empres ab aquells qui la comanda los hauran feta, no son tenguts de res a retre ne esmenar los comandataris. Mas, si ells la aportaven en altres lochs o en altres viatges, pusque ells haurien fet port, axi com desus es dit, abans que haguessen comptat ab aquells qui la comanda los haurien feta, e la comanda se perdra, los dits comandataris serien tenguts de retre tota la comanda. E si ells guanyaven axi com en lo primer capitol es contengut, haurien a retre axi be lo guany com la comanda.

Capitol clxvii. Declaracio del precedent.

Segons[1] que en lo capitol desusdit diu e demostra e declara, que tot comandatari qui portara comandes a viatge o a loch cert e sabut, si en aquell loch on ells devien portar aquelles comandes, seran aquelles condicions que en lo capitol desusdit son ia esclarides, e que ell no y gos' entrar, e si ell se pot avenir ab lo senyor de la nau o del leny, ab qui ell sera, per anar

[1] *Segons*] Esp. 124, chapter clxxiv. begins here with the Rubric "Sagons que en lo capitol desusdit diu e demostra."

may arrange with the said merchants, although it happen that the place, which the managing owner of the ship and the commissioners shall adopt, be not agreed upon by those who gave the commission; wherefore for the three reasons above mentioned every commissioner may carry the goods intrusted to him to another place, provided it be to preserve the goods which he shall carry with him, and for no other reason, and this should be done without any fraud. And immediately after they have gone into port at that place, which during the voyage they have agreed upon with the managing owner of the ship, the said commissioners ought to sell and dispose of all the commissions which they hold, and return to those who gave them the commissions, and report to them the commissions which they have executed. And if in that place, where it shall be for any such reason as above said, the said commission shall be lost, although it be that the place was not agreed upon with those who gave the commission, the commissioners are not bound to replace or compensate any thing. But if they have carried the goods to other places or on other voyages, after they have gone into port, as above said, before they have accounted with those who gave them the commission, and the commission shall be lost, the said commissioners are bound to make good all the commission. And if they have gained anything, precisely as is contained in the first chapter, they shall have to make good as well the gain as the commission.

Chapter clxvii. Explanation of the preceding.

According to what in the above said chapter has been said, and shewn and declared, every commissioner who shall carry commissions on a voyage or to a given and known place, if in that place where he ought to carry those commissions, there shall be those conditions which in the abovesaid chapter have been explained, and he dare not enter, and if he can arrange with the managing owner of the ship or vessel, with whom he shall be, to

en altre loch on aquelles condicions, que en lo capitol desusdit son ia dites e esclarides no seran, que ell hi pot anar; jat sia aco que aquell loch, on ell se avendra ab lo senyor de la nau o leny, e ira, no haura empres ab aquells qui les comandes li hauran fetes. Mas, en lo capitol desusdit, no diu ne esclareix, se lo senyor de la nau o del leny porta mercaderia sua, e haura rebudes comandes de altre o de altres, e si pora fer axi com los comandataris volran, o si sera de pijor condicio que altre comandatari. E axi los nostres antichs antecessors veren e conegueran que los senyors de les naus o lenys, qui porten mercaderies lurs, e prenen comanda d'altre o d'altres, o que porten mercaderia lur o no, sol que aporten comandes d'altres, no deven esser de pijor condicio que un altre comandatari. Per qual rao? Perco com comandataris van per lo mon molts qui en tot co que porten no en alguna cosa. Encara mes, si aquelles comandes no eren que hom los fa, irrien a onta. Encara mes, si aquelles comandes se perden, ells no y son en res, perco car a ells no costara res del lur ne y perdran res. Mas, lo senyor de la nau o leny, sia que port mercaderia sua o no, totavia val mes co que ell ha en la nau o leny, que no fa gran res de les comandes que ell porta e haura preses en si, e en axi lo senyor de la nau o leny no pot ne deu esser de pijor condicio que un altre comandatari. Empero es axi a entendre, que si en la sua nau o en lo seu leny haura alguns altres comandataris, si les condicions, que son dites, seran en aquell loch on ells devien descarregar e anar, lo senyor de la nau se deu aconsellar, e havir accort e consell ab ells, e aquella

go to another place where those conditions, which have been mentioned and declared in the abovesaid chapter, do not exist, he may go there, although it may be that the place which he shall agree upon with the managing owner of the ship or vessel, and shall go to, has not been agreed upon with those who gave him the commisions. But in the chapter aforesaid it has not been said nor declared, if the managing owner of the ship or vessel carry merchandise of his own and has received commissions from another person or other persons, whether he may act as the commissioners shall wish, or is in a worse condition than another commissioner. And accordingly our predecessors of olden time saw and adjudged that managing owners of ships or vessels, who carry merchandise of their own, and have accepted commissions from another or others, and whether or not they carried merchandise of their own, carried commissions from others, ought not to be in a worse condition than another commissioner. For what reason? Because many commissioners voyage about the world who have nothing of their own amidst all which they carry. Still more, if those commissions were not such as could be executed, they would be put to shame. Still more, if those commissions should be lost, they would incur no loss, for it would cost them nothing, and they would lose nothing. But whether the managing owner of the ship or vessel carries merchandise or not, his stake in the ship or vessel is always worth more, so that the goods which he carries on commission will not be of much account to him, and accordingly the managing owner of the ship or vessel ought not to be in a worse condition than any other commissioner. Nevertheless, it is to be understood that if in his ship or vessel he shall have other commissioners, if the conditions aforesaid shall exist in the port where they ought to go and discharge their cargo, the managing owner of the ship ought to consult and take advice and agree with them, and he has power to do that which he

cosa que ell ab ells tendran per be, ells ho poden fer, que algu no y pot res dir. Empero, si en la sua nau o leny haura roba de mercaders, e sobre aquella roba no y ira algu, ne lo senyor de la nau o leny la tendra en comanda, sino tan solament que ell la deia delivrar a algu en aquell loch on devia descarregar; si les condicions desus dites hi seran, que ell no y gos' entrar, lo senyor de la nau o leny no les deu portar pus en altre loch, pus a ell no seran comanades que les puxa vendre, ans les deu tornar a aquells mercaders qui les li livraren. E si lo senyor de la nau o del leny les porta en altre loch, e aquella roba se perdra, lo senyor de la nau es tengut de tota a retre e esmenar. Encara mes, si ell la portara en altre loch, si ell la vendra e en aquella roba se guanyara, lo senyor de la nau o leny es tengut de donar e retre a aquells mercaders, de qui aquella roba sera, lo cabal e tot lo guany en aquella fet, e los dits mercaders ne son tenguts de donar ne retre a aquells senyors de naus o lenys o d'aquell leny dan ne messio que ell ne haia sostengut, si no s'volran. Empero, si lo senyor de la nau o leny haura mercaderia sua, e tendra tota la roba, que en la sua nau o leny sera en comanda, que ell la pusca vendre, encara que ell no y haia roba sua, mas que tenga tota la roba o mercaderia, que en la sua nau o leny sera en comenda, que ell la pusca vendre e que n'sia mercader; si lo dit senyor de nau o leny no gosara entrar en aquell loch on les comandes devria vendre, que ell se n'haura star per les condicions que en lo capitol desusdit son ja esclarides e certificades, ell pot mudar lo viatge per anar en altre loch, on no haia reguart de les condicions que desus son dites; en aquesta guisa, empero, que ell aco faca ab consell de

with them shall approve, so that no one may object. Nevertheless, if there be in his ship goods of merchants, and there be no one in charge of them, and the managing owner of the ship has no commission respecting them, further than that he ought to deliver them to some person in the port where he ought to discharge, if the conditions above said exist so that he dare not enter the port, the managing owner of the ship or vessel ought not to carry them afterwards to another port, since he has no commission to enable him to sell them, consequently he ought to restore them to those merchants, who delivered them to him. And if the managing owner of the ship or vessel carries them to another port, and the goods are lost, the managing owner of the ship is bound to replace and make good the whole of them. Still further, if he shall carry them to another place, if he shall sell them and gain anything thereby, the managing owner of the ship or vessel is bound to pay and restore to those merchants, to whom the goods shall belong, the capital and all the gain made with them, and the said merchants are not bound to pay or make good to those managing owners of ships or vessels or of that vessel any loss or expense which he may have sustained, unless they wish to do so. Nevertheless, if the managing owner of a ship or vessel shall have merchandise of his own, and shall hold all the goods which shall be in his ship or vessel on commission, that he may sell them, further if he has no goods of his own, but holds all the goods and merchandise which shall be in his ship or vessel on commission, that he may sell them and may be the merchant of them, if the said managing owner of the ship or vessel shall not dare to enter into that port where he ought to sell the commissions, because he is prevented by the circumstances which in the above-mentioned chapter have been declared and made clear, he may change his voyage to go to another place, where he has not to dread the circumstances above mentioned; in this manner, however, that

tot lo cominal de la nau o leny, o de la major partida. E si tot lo cominal de la nau se acorda de anar en aquell loch on ell los dira, e l's fera cert, e dara entenent, o la major partida, ell hi pot anar e axi pot cambiar lo viatge. Empero, si tot lo cominal de la nau o la major part se acordaran mes de l'tornar en aquell loch de on partits seran, que de mudar lo viatge per anar en altre loch, lo senyor de la nau o leny se n'deu tornar, o sino se n'volra tornar e ell per sa autoritat mudara lo viatge, si les comandes que ell portara ab si se perdran de tot o de partida, ell es tengut de retre a aquells qui les comandes li hauran fetes, tot co que les comandes costaren, e lo guany que ells diran per lur sagrament que pogueren haver fet si ell se n'fos tornat axi com lo cominal de la nau, o la major partida li consellava. Empero, si lo senyor de la nau ira ab acort e ab consell de tot lo cominal de la nau e de la major partida, si les comandes se perdran de tot o de partida, lo senyor de la nau no es tengut de esmenar a quells qui les comandes li hauran fetes, pus ab consell de tot lo cominal de la nau hi sera anat. Que rao es, que l'senyor de la nau puga cambiar viatge, pus ell sera mercader de tota la roba que portara, pusque ell la pot gitar en mar, si mercader no y ha, ab consell de tots los mariners per casos sabuts. E per les raons desusdites, feren aquestes esmenes los nostres antecessors per los contrasts que porien esdevenir. E tot co que desus es dit, deu esser fet menys de tot frau; e si frau algu provar s'y pora, la part contra qui provat sera, deu satisfaire tot lo dan a la part que sostengut l'aura, sens tota malicia e sens tot difugi.

he do it with the counsel of all the crew of his ship or vessel, or of the greater part. And if the whole of the crew of the ship, or the greater part, agree to go to that place which he proposes to them, and shall certify him and give their assent, he may go there, and accordingly may change his voyage. Nevertheless, if all the crew of the ship or the greater part agree rather to return to that place from which they set out, than to change the voyage and to go to another place, the managing owner of the ship or vessel ought to return, or if he does not wish to return, and shall of his own authority change the voyage, if the commissions, which he carries with him, shall be lost in whole or in part, he is bound to make good to those who intrusted them to him all which they cost and the gain which they shall declare upon their oaths that they could have made, if he had returned according as the crew of the ship or the greater part advised him. Nevertheless, if the managing owner of the ship shall go with the assent and with the advice of all the crew of the ship or the greater part, if the commissions are lost in whole or in part, the managing owner of the ship is not bound to compensate those who intrusted the commissions to him, since he will have gone with the advice of all the crew of the ship. For it is reasonable that the managing owner of the ship may change the voyage, for he is the merchant of all the goods which he carries, since he has the power to cast them overboard into the sea,[1] if there be no merchant on board, with the advice of all the mariners in given cases. And for the reasons above said our predecessors have made these amendments for the disputes which may supervene. And all which is above said should be done without fraud, and if any fraud can be proved, the party against whom it shall be proved ought to satisfy all the loss of the other party who has sustained it, without any malice or subterfuge.

[1] *into the sea*] As provided in chapter liv.

Capitol clxviii. De comanda presa com a cosa propia.

Comandataris[1] qui portaran comandès a viatge o a loch sabut, e ells empendran ab aquells qui la comanda los faran, que els puguen fer de la comanda axi com de la sua cosa propia; e aquells qui la comanda los faran los ho atorgan en qualsevulla loch, anant en aquell viatge, ells lexaran la comanda perco com no la hauran poguda vendre, e los comandataris juraran que si lur propi fos, que no y feren altre; aquells qui en aytal forma feren comanda, no poden de res altre destrenyer als comandataris, sino que axi com los dits comandataris ho cobraran que ho deven retre e donar a aquells, qui la comada hauran feta, salvo lo lur maltret, axi com hauran empres ab aquells qui les comandes hauran fetes. Mas empero, los comandataris deven cobrar aquella roba que lexada hauran, e retre e donar a aquells qui comanat los hauran; e aco sia fet sens frau, e deven cobrar co que de la comanda sera hagut com pus ivas puguen.

Capitol clxix. Item de comanda.

Mercader[2] o altre qui fara comanda a algu en aquesta guisa, que aquell qui la comanda pendra la puga portar totavia ab si en tot loch on la sua persona vaia, e la comanda se perdra, ella sera perduda a aquell qui comanada la li haura. Empero, si aquell qui la comanda portara, la jugava o la bagasseiava o la baratava o la perdia per sa culpa, o si ell la comanava a altre, e s'perdia, ell es tengut de retre a aquell qui la comanda li haura feta, sens tot contrast.

Capitol clxx. De comanda promesa.

Mercader[3] o altre, qui prometra de fer comanda a algu ab carta o ab testimonis, no s'pot abstraure, que no haia a fer la comanda a aquell a qui promes ho

[1] *Comandataris*] Esp. 124, chapter clxxv. commences here with the Rubric "Comandataris qui portaran comandes a viatge o en loch sabut."

[2] *Mercaders*] Esp. 124, chapter clxxvi. here begins with the Rubric "Mercader o alcun altra qui fara comanda a alcun."

[3] *Mercader*] Esp. 124, chapter clxxvii. here begins with the Rubric "Mercader ne altre qui prometra de fer comanda a alcun."

Chapter clxviii. Of commissions accepted as their own property.

If commissioners carry commissions on a voyage or to a known place, and they arrange with those who confide to them the commission, that they may deal with the commission as if it was their own property; and they who have confided to them the commission have allowed them that during the voyage they may leave the goods in any place they choose in case they are not able to sell them, and the commissioners will swear that, if it had been their own property, they would not have done otherwise; those who confide commissions in that form cannot exact any thing else from their commissioners than that whatever they may recover they shall restore and give it to those who confided to them the commission, saving always their expenses, according as has been agreed upon with those who confided to them the commissions. But nevertheless the commissioners ought to recover the goods which they have left ashore, and restore and give them to those who committed them to their charge, and this should be done without fraud, and they ought to recover what they can of the commission as quickly as possible.

Chapter clxix. Further of commissions.

A merchant, or other person, who shall confide a commission to any one in this manner, that he who accepts the commission may carry it with him always to every place to which he may go in person, and the commission shall be lost, it shall be lost to him who has confided the commission. Nevertheless, if he who shall carry the commission has gambled with it, or has spent it in debauchery, or has squandered it away, or has lost it through his own fault, or if he shall have committed it to another and it be lost, he is bound to replace it to him who has committed it to him without any dispute.

Chapter clxx. Of a commission promised.

A merchant or other person, who promises to entrust a commission to another in writing or before witnesses, cannot withdraw from entrusting the commission to him

haura. E si ell se vol abstraure que no faca la comanda a aquell a qui promesa la haura, si aquell ne haura feta messio o averies algunes, o haura nolieiat nau o leny per fianca de la comanda que aquell li haura promesa, ell lo y deu tot esmenar. E fon fet perco aquest capitol, car si aquell no li hagues promes aquella comanda, ell no haguera nolieiada tan gran nau, sino perco que aquell li havia promes; e aquell haguera fet son prou o haguera fet son viatge.

Capitol clxxi. Item de comanda.

Si algun[1] comandatari pendra comanda, e si lo comandatari haura alguns diners, e la, on pendra la comanda, ell esmercara la comanda e los seus diners, e quant sera la, on anar devra ab la comanda, ell esmercara los diners seus e no esmercara la comanda; si ell guanya ab los seus diners ell es tengut de donar a aquell qui la comanda li haura feta, anant al viatge, aytant com ell guanyara ab los seus diners per sou e per livra. E si ell perdra ab los seus diners, tota la perdua deu esser sua, si donchs aquell qui la comanda li fara, no li havia dit que no l's esmercas sino en coses sabudes. E si aquell dit no lo y havia, e ell esmercara la comanda ab los seus diners ensemps, lo guany e la perdua se partira per sou e per livra.

Capitol clxxii. Comanda en diners.

Si algu[2] comanara a algu diners, si aquell, qui la comanda fara, empendra ab aquell qui la comanda rebra, que ell no li esmerce aquells diners seus sino en cosa sabuda, si aquell qui lo comanda haura rebuda no trobara d'aco que ell li haura dit, ell ne deu levar testimonis com ell no troba d'aquella cosa que ell li havia manat esmercar: perco, que si havia en aquell loch meteix alguns mercaders qui haguessen comprades d'aquelles mercaderies en que ell devia esmercar aquells

[1] *Si algun*] Esp. 124, chapter clxviii. commences here with the Rubric "Si alcun comandatari pendra comanda a alcun."

[2] *Si algu*] Esp. 124, chapter clxix. here begins with the Rubric "Si alcun comanara a alcun diners, si aquell qui la comanda fara."

to whom he has promised it. And if he wishes to withdraw from entrusting the commission to him to whom he has promised it, if the latter has made any expenses or any advances, or has freighted a ship or vessel on the faith of the commission which has been promised to him, he ought to compensate him fully. And this chapter was made, because if the one party had not promised that commission, the other would not have freighted so large a ship unless the former had made the promise, and he would have transacted his own business and made his own voyage.

Chapter clxxi. Further of a commission.

If any commissioner accepts a commission, and if the commissioner has some money, and in the place where he has accepted the commission he shall spend the money committed to him and his own money, and when he shall be at the place whither he ought to go with the commission he shall spend his own money and not the money committed to him; if he gains with his own money, he is bound to give to him who has confided to him the commission, when going on the voyage, as much as he shall gain with his own money by shillings and by pounds. And if he loses with his own money, all the loss ought to be his own, unless he, who has confided to him the commission, has said to him that he shall not spend it except upon given articles; and if he has not said so, and the latter shall spend the commission together with his own money, the gain and the loss shall be divided by shillings and pounds.

Chapter clxxii. Commissions of money.

If any one commits to the charge of any one money, if he who has entrusted the commission, shall arrange with him who has accepted the commission that he shall not spend the money except on given articles, if he who has accepted the commission shall not find that which the other has specified, he ought to have it attested that he could not find the article upon which he commissioned him to spend the money; because if there be in that very place any merchants who have purchased the kind of merchandise upon

diners que ell ha rebuts en comanda, e si aquells hi guanyaven alguna cosa, e si aquell qui los diners li haura comanats li n'fahia demanda, ell pogues mostrar e metre en ver per aquells testimonis que ell no havia trobada de aquella mercaderia en que aquell li havia manat esmercar sos diners. E si per ventura provar no u pora, que ell d'allo en que ell devia e havia manament que esmercas aquells diners, que ell en comanda haura presos, que ell no n'hagues trobat, ell es tengut de retre e de donar a aquell qui los diners li haura comanats, tant com aquells mercaders hi hauran guanyat per sou e per livra. E si per ventura ell esmercara aquells diners en altres coses sens voluntat d'aquells qui los diners li hauran comanats, si en aquelles mercaderies se guanyara, ell es tengut a aquell, qui los diners li comana, de retre e de donar tot lo guany. E si en aquelles mercaderies, que ell haura comprades sens voluntat d'aquell qui los diners li comana, se perdra [1] de tot o de partida, tota la perdua deu esser sua; perco, car ell los esmerca en aco de que ell no havia manament que l's esmercas; e encara mes, car negu no ha poder en so d'altre sino aytant com aquell de qui es li n'dona. E si, per ventura, ell sera en loch que pogues retre aquells diners a aquell qui comanats los hi haura, e ell no l's hi retra, ans los se n'portara ab si, si aquells diners vendra cas de ventura, que s'perden de tot o de partida, tota la perdua deu esser sua. Empero, si ell no sera en loch que pogues retre aquells diners a aquell qui comanats los hi havia, ell los se n'pot portar. E si en aytal manera com es dita, o aquels diners vendra algun cas de ventura, que s'perdran de tot o de partida, ells deven esser perduts a aquell qui l's hi comana, per que no es culpa del comandatari. Empero, si lo dit

[1] *se perdra*] The passage commencing here down to "deu esser sua" is omitted from the text of Esp. 124, but it is added in black ink at the bottom of the page.

which he ought to spend the money, which he has received on commission, and if they have gained any profit, and if he who committed to him the money makes a claim against him, he may be able to show and verify by that attestation that he could not find any of that merchandise, upon which the other had commissioned him to spend his money. And if by chance he cannot prove that he could not find any of that merchandise, upon which he had a commission to spend that money, which he received on commission, he is bound to restore and to give to him who has entrusted him with the money, as much as the other merchants have gained in shillings and pounds. And if by chance he shall have spent that money on other articles without the consent of those, who entrusted him with their money, if he shall gain with that merchandise, he is bound to hand over to him, who entrusted him with the money, all the gain. And if he shall lose either the whole or a part of that merchandise, which he shall have bought without the consent of him who entrusted him with the money, all the loss ought to be his own; because he has spent the money upon that upon which he had no authority to spend it, and still more, because no one has power over the property of another, except as far as the owner permits it. And if by chance he shall be in a place where he can restore that money to the person who has committed it to him, and he shall not restore it, but shall carry it away with him, if that money meets with an accident and is lost in whole or in part, all the loss ought to be his. Nevertheless, if he be not in a place where he can restore that money to the person who has committed it to him, he may carry it away with him. And if in the manner above said an accident happens to that money, so that it is lost either in whole or in part, it ought to be lost to him who entrusted it to the other, for it is not the fault of the commissioner. Nevertheless,

comandatari los jugara, o s'perdran per alguna rao per culpa d'ell, ell n'es tengut de tots a restituir. E tot en aquella manera que desus es dit de la comanda dels diners, axi deu esser fet de la roba o mercaderia, si algu la comanara a altre, sots condicions sabudes. E per les raos desusdites fon fet aquest capitol.

Capitol clxxiii. De comanda de nau.

Senyor[1] de nau o de leny, qui comanara la sua nau a algu per anar en viatge sabut, si anant o stant o tornant e aquell viatge, la nau se rompra o prendra algun dan, aquell qui la nau o leny haura pres en comanda, no es tengut de res esmenar al senyor de la nau qui comanada la li haura. Empero, si ell la menara en altre loch o en altre viatge, sino tan solament en aquell loch que ab lo senyor de la nau haura empres, o ab aquell qui comanada la li haura, si la nau se perdra o haura algun dan, aquell, a qui lo leny sera comanat, es tengut de esmenar la nau o leny a aquell qui comanat lo li haura, o lo preu d'aquell e lo dan que sostengut ne haura. E si no ha de que pagar, deu star en la preso, tro que haia satisfet a aquell qui comanat lo li haura, e haia de que pagar o no. E lo senyor de la nau, qui comanat lo li haura, es tengut de donar als personers les parts que hauran en la nau, e lo guany fet de aquelles. Mas si lo senyor de la nau la y comanara ab voluntat de tots los personers, o de la major partida, e la nau se perdra axi com es dit, lo senyor de la nau no es tengut de fer esmena als personers: per que tot senyor de nau ho deu demanar als personers com volra comanar la sua nau a

[1] *Senyor*] Esp. 124, chapter clxxx. begins here with the Rubric "Senyor de nau o de leyn qui comanara la sua nau o l'seu leny."

if the said commissioner shall waste it in gambling or shall lose it by any fault of his own, he is bound to restore it altogether. And in the same manner as above said with regard to a commission of money, so ought it to be done with regard to a commission of goods or merchandise, if any one shall entrust them to another on given conditions. And for the reasons above said this chapter was made.

Chapter clxxiii. Of the commission of a ship.

If the managing owner of a ship or vessel shall commit his vessel to any one to go upon a given voyage, and if in going, or in staying, or in returning on that voyage the ship shall break up or suffer any damage, he who has accepted the ship or vessel on commission, is not bound to compensate in any way the managing owner of the ship, who has entrusted it to him on commission. Nevertheless, if he shall conduct her to another place or on another voyage, and not merely to that place, which has been agreed upon with the managing owner of the ship or with him who has commited her to his charge, and if the ship shall be lost or suffer any damage, he, to whose charge the vessel was committed, is bound to make compensation for the ship or vessel to him who has committed it to him, or for the price of it, or for the loss which he shall have sustained. And if he have not wherewithal to pay, he ought to be placed in prison until he has satisfied him who committed it to his charge, and whether or not he has wherewithal to pay. And the managing owner of the ship, who has entrusted the ship to him, is bound to pay to the part-owners the shares which they have in the ship, and the gain made with them. But if the managing owner of the ship has entrusted it on commission with the assent of all the part-owners, or of the greater part, and the ship shall be lost as above said, the managing owner of the ship is not bound to make compensation to the part-owners, wherefore every managing owner of a ship ought to request of the part-

altre, si es en loch que l's personers hi sien tots, o partida; e si ell es en loch on no haia algun personer, ell no l'deu comanar a negu, sino per condicions sabudes, co es a saber, per malaltia, o que la nau fos nolieiada per anar en loch on ell se temes de senyoria, o que hagues fermada muller ans que la nau nolicias, o que l's amichs lo forcasen que la prengues ans que anas al viatge, o per anar en romiatge e que n'hagues fet vot ans que la nau nolicias: e totes aquestes condicions desusdites que sien sens frau.

Capitol clxxiv. De comanda de nau sens sabuda dels personers.

Si algun[1] senyor de nau haura comanada la sua nau a algu sens sabuda delś companyons, si aquell a qui la nau sera comanada vendra d'algun viatge o viatges, e retra comptes a aquell qui la nau li haura comanada, e aquell, qui senyor sera, encara haura comanada la nau a algu, si ell retra compte e dara part a quascu de sos companyons tot aytant, com a quascu pertanyara per rao de la part que en la nau haura, del guany que aquell, a qui ell haura comanada la nau, haura fet ab aquella nau que ell comanada li haura; si los dits personers pendran la lur part del guany que a quascu per la part que en la nau haura se pertany, si los dits personers tots o partida diran a aquell que ells d'aquella nau hauran fet senyor, que ells no volen que ell la coman a algu sens lur voluntat, e si ell ho fa, e la nau pendra algun dan o fara alguna perdua

[1] *Si algun*] Esp. 124, chapter clxxxi. commences here with the Rubric, "Si alcun senyor de nau o "leyn aura comanada la sua nau o "l'seu leny."

owners their assent, whenever he wishes to entrust the ship to another on commission, if he is in a place where all or some of the part-owners are present; and if he is in a place where no part-owner is present, he ought not to entrust it to any one on commission, except under certain circumstances, such for instance: in case of illness, or because the ship has been freighted to go to a place where he is afraid of the local authorities, or because he has betrothed himself to a woman before the ship was freighted, and her friends force him to marry her before he goes on a voyage, or because he has to go on a pilgrimage and has made a vow to go upon it before the vessel was freighted, and all these conditions should be without fraud.[1]

Chapter clxxiv. Of the commission of a ship without the knowledge of the part-owners.

If a managing owner of a ship shall have committed his ship to another person without the knowledge of the part-owners, if he to whom the ship has been intrusted returns from a voyage or voyages, and renders an account to him who has entrusted the ship to him, and he, who is the managing owner, shall again intrust the ship to some one, if he shall render an account and pay a share to each of the part-owners, as much as appertains to each by reason of the share which he has in the ship, of the gain which he, to whom he committed the ship, has made with the ship which was intrusted to him; if the said part-owners shall accept their part of the gain which belongs to each in respect of the share which he has in the vessel; if the said part-owners, all or part, shall say to him whom they have constituted managing owner of the ship, that they do not wish him to commit it to any one without their consent; and if he does so commit it, and the ship suffers any damage or incurs any loss or wear and tear, it shall all rest upon

[1] *without fraud*] The same four matters are specified in chap. cxlix. as sufficient to excuse the managing owner from accompanying his vessel.

o consumament, que tot sia e stiga sobre ell. E si sobre les dites condicions desusdites per los personers a aquell qui ells d'aquella nau, en que ells hauran lur part, hauran levat o fet senyor, si ell sens voluntat de tots los personers, o de la major partida, a algu la comanava; si aquell, a qui la comanara, guanyara, ell es tengut de donar a quascun personer, que ell haura, la part del guany que per la sua part li pertanyara. E si per ventura, aquell a qui ell haura comanada la nau sots les condicions desusdites, perdra la nau o pendra algun dan o fara algun consumament, lo senyor de la nau es tengut de tot a retre e esmenar ho als personers sens contrast. Empero, si los dits personers veuran e sabran que aquell que ells hauran fet senyor, no va ne ira en la nau, ans saben ells e son certs que la comana a altre, si los personers pendran part del guany que aquell ab aquella nau, que comanada li sera, fara, e los personers no n'diran res a aquell que ells hauran fet senyor, ans los plau e l's abelleix lo guany que ells los dona: e si sobre aquestes raons desusdites la nau se perdra o pendra algun dan, lo senyor de la nau no l's es de res tengut, perco, car los personers sabien que ell no anava en la nau, que ans la comanava a altre qui la menava per ell; e encara mes, perco com los personers prengueren quascun viatge que la nau fes la part del guany, que a quascu pertanyia per rao de la sua part que en la nau havia. E es rao que pus ells prenien part del guany, e encara que eren certs que aquell qui n'havien fet senyor no y anava, ans la fahia menar a altre, e los personers no u denonciaven a aquell

him. And if under the conditions above said as laid down by the part-owners for him, whom they shall make managing owner of the ship in which they have their share, the managing owner without the consent of all the part-owners, or of the greater part, has committed the ship to any one, if he to whom he shall commit her shall make gain with her, he is bound to give to each part-owner that part of the gain which shall belong to his share. And if by chance the person, to whom he has committed the ship under the conditions above said, shall lose the ship, or it shall take any damage or undergo any wear and tear, the managing owner of the ship is bound to make it all good, and to give compensation to the part-owners without dispute. Nevertheless, if the said part-owners have seen and known that he whom they have made managing owner does not and will not go in the ship, before they knew and were informed that he had committed her to the charge of another, if the part-owners shall take part of the gain which the other shall make with the vessel which has been intrusted to him, and the part-owners shall say nothing to him whom they have made managing owner, on the contrary the gain which he has given them pleases them and satisfies them, and if after these reasons aforesaid the ship shall be lost or suffer any damage, the managing owner of the ship is not responsible to them for it, because the part-owners knew that he was not going in the ship, and that on the contrary he had committed her to another to conduct in his place; and still further, because the part-owners have taken on every voyage, which the ship has made, the part of the gain which belonged to each by reason of the share which he had in the vessel. And it is reasonable, since they have taken their part of the gain, and further were informed that he whom they had made managing owner of the ship was not going, and on the contrary had intrusted the ship to another to conduct, and the part-owners have not remonstrated with

qu'ells havien fet senyor, ans los plahia lo guany que ell los donava: e perco es rao que axi com los plahia lo guany, tot en axi es rao que deian sostenir lo dan e la perdua, e l'consumament que Deu li donava, axi com los plahia e l's abellia lo guany, com aquell qui ells avien fet senyor lo l's donava. E per les raons dites fo fet aquest capitol. Empero es axi a entendre que l'senyor de la nau sia en un loch ab los personers ensemps ab tots o ab partida, car altrament no la pot ne la deu comanar sino per les condicions que son ia en un capitol desusdit esclarides e certificades.

Capitol clxxv. De comanda, que algu pendra en lo comu, o sparsa.

Si senyor[1] de nau o leny, o altre leva algun comu, e ell pendra de algun mercader comanda sparsa de roba o de diners; e si aquell, qui la comanda pendra, no fara entenent que aquella comanda que ell pren, que ell la mesclara al comu, ne en la carta que entre ells sera feta no s'entendra, que aquella comanda que ell pren se dega mesclar ab aquell comu que deu portar ab si, ell es tengut de retre compte a quell qui la comanda li haura feta. E si li fara comanda de roba, ell li deu retre compte d'aco que de la roba haura hagut: encara mes, aquells diners, que haura haguts, deu esmarcar en qualque cosa que lo dit comandatari se volra, si donchs aquell, qui la comanda li haura feta, no haura empres ab aquell, que no li esmerc los diners que haura haguts d'aquella roba, que ell comanada li haura, o que ell

[1] *Si senyor*] Esp. 124, chapter clxxxii. begins here with the Rubric "Si senyor de nau o altra leva alcun comun, e ell pendra d'alcun mercader."

him whom they had made managing owner, on the contrary the gain which he had procured for them had pleased them, and for this reason, as the gain pleased them, so it is reasonable that they ought to sustain the damage and loss, and wear and tear, which God has brought upon them, equally as they welcomed and were pleased with the gain which he, whom they had made managing owner, had procured for them. And for the reasons above said this chapter was made. Nevertheless it is to be understood that the managing owner of the ship is in one and the same place together with the part-owners, all or the greater part; for otherwise he cannot and ought not to intrust the ship to another, except under the conditions which have been explained and declared in a preceding chapter.[1]

Chapter clxxv. Of a commission, which anyone accepts in common or separately.

If a managing owner of a ship or vessel carries goods which belong to others in common with himself, and he accepts from any merchant any separate commission of goods or money, and if he who accepts the commission does not make it understood that the commission which he accepts shall be mixed up with the other goods in common, and in the contract which shall be made between them it is not understood that the commission which he has accepted ought to be mixed up with the goods in common which he carries with him, he is bound to render an account to him who has intrusted him with the commission; and if he intrusts to him goods on commission, he ought to render him an account of that which he has received for the goods; still more, the money which he has received for them he ought to spend on whatever thing the said commissioner chooses, unless he who gave the commission has arranged with him that he should not spend the money which he has received for the goods which he has intrusted to him, or that he

[1] *chapter*] The chapter immediately preceding.

no n'compre sino cosa sabuda, axi com entre ells ab dosos sera empres. E si li comana diners, e ell comprava roba, ell li es tengut de retre compte de co que haura hagut de la roba, que ab los diners que ell li coman haura comprada, e ell haura venuda, e d'aco que esmercara d'aquella roba que ab los seus diners haura comprada, e metre en compte pera quant que ell sia tornat del viatge, e metre en son poder lo cabal e l'guany que ab la dita comanda sera fet, salvo lo seu maltret que entre ells sera empres. E si lo comu pert o guanya, aquell qui la comanda li haura feta no n'es en res, ne aquell qui la comanda haura presa no li es tengut sino de la comanda a retre. E si guanya o pert ab la dita comanda tot li u deu donar e metre en son poder, axi be lo guany com la perdua, per que ell no es tengut a aquells de qui lo comu sera, per rao d'aquella comanda que ell d'algu presa haura, si donchs ell no l's havia fet entenent que al comu anava aquella comanda que ell havia presa. Mas, aquell qui la comanda haura feta, no es tengut de res aquells de qui lo comu sera, sia que perden o que guanyen, ne aquells de qui lo comu sera, a aquell qui la comanda haura feta. Mas, si pert o guanya, deu esser seu axi be lo guany com la perdua. E si, per ventura, aquell qui leva lo comu e haura presa la comanda, mesclara aquella ab lo comu, menys de sabuda de aquell qui feta la li haura, e lo dit comandatari compte retre no li n'pora, perco, car la haura mesclada ab lo comu, sia en voluntat de aquell qui la comanda li haura feta de pendre lo major preu de la

should not buy any but certain things, according as it shall have been arranged between them both. And if he has intrusted to him money, and he has bought goods, he is bound to render him an account of that which he has had of the goods which he has bought with the money intrusted to him, and which he has sold, and of that which he has received in exchange for the goods which he has purchased with his money, and to give an account of it as soon as he has returned from his voyage, and to place at his disposal the capital and profit which has been made with the said commission, saving always his outgoings, which have been arranged between them. And if the company loses or gains, he who has intrusted the commission is not responsible for anything, and he who has accepted the commission is not responsible to him further than to render back the commission. And if he gains or loses with the said commission, he ought to place the whole at the disposal of him who has intrusted to him the commission as well for the gain as for the loss, because he is not bound to those of whom the company consists, in respect of the commission which he has received from any one, unless he has made it understood that the commission, which he has accepted, went to the company. But he who has accepted the commission is not responsible for any thing to those of whom the company shall consist, whether he gains or loses, nor those of whom the company shall consist to him who has intrusted the commission. But if he loses or gains, the gain equally as the loss ought to be his. And if by chance, he who takes charge of the goods of the company, and shall have accepted goods on commission, mixes them up with the goods of the company without the knowledge of him who has intrusted to him the commission, and the said commissioner cannot render an account, because he has mixed it up with the goods of the company, it shall be at the option of him who has intrusted to him the commission to take

roba que haura hagut la on la comanda haura venuda; encara mes, lo major preu de la roba que ell haura portada, e lo major guany que en la roba se fara: e aquell li sia tengut de dar aquell qui la comanda haura presa, a aquell qui feta la li haura: perco, car ell la haura mesclada ab lo comu, menys de voluntat sua. E aco li es tengut de donar e de retre menys de contrast.

Capitol clxxvi. De comanda, qui s'perdra e lo comandatari se abatra.

Tot[1] comandatari qui portara o pendra comandes, si les comandes se perdran per les raons que en los capitols desusdits se contenen, ell no es tengut de les comandes a retre. Mas, si les comandes se perden per altres raons, e no per aquelles que en los capitols desusdits se contenen, ell es tengut de retre e de donar totes les comandes e l'guany ab aquelles fet a aquells, qui les comandes li hauran fetes; si donchs ell no pot mostrar justes raons per que aquelles comandes sien perdudes. E si ell mostrar ne provar no pot, ne les comandes retre no pora a aquells de qui seran, e lo dit comandatari se abatra; si ell se abatra e es aconseguit, ell deu esser pres e mes en ferres e star tant tro que aquells, de qui les comandes seran, se sien avenguts ab lo dit comandatari. E fon fet perco aquest capitol: car molt comandatari se abatria si sabia que algun mal ne algun damnatge o greuge no li n'pogues esdevenir; e son hi posades perco les condicions que desus son dites.

Capitol clxxvii. De patro, qui lexa la

Si algun[2] senyor de nau o leny portara mercaderia sua o comandes, e ell sera la on la nau haura fet port,

[1] *Tot*] This and the next following chapters are transposed in Esp. 124, and chapter clxxxiii. commences with the Rubric "Si senyor de "la nau o de leyn portara mercaderia sua a comandes."

[2] *Si algun*] Esp. 124, chapter clxxxiv. follows here, with the Rubric "Comandatari qui portara ò "pendra comandes."

the highest price of the goods, which they have fetched there where the goods were sold; still more, the highest price of the goods which he has carried, and the greatest profit which the goods have made; and he who has accepted the commission is bound to pay it to him who has intrusted to him the commission, because he has mixed it up with the goods of the company without his consent. And this he is bound to give and render without any dispute.

Chapter clxxvi. Of a commission, which is lost, and of the commissioner, who becomes bankrupt.

No commissioner, who shall carry or accept commissions, if they are lost for the reasons contained in the above-mentioned chapters,[1] is bound to make good the commissions; but if the commissions are lost for other reasons, and not for those which are contained in the abovesaid chapters, he is bound to make good all the commissions and the gain[2] made with them to those who have intrusted him with them, unless he can show just reasons why those commissions have been lost. And if he cannot show nor prove such reasons, nor can make good the commissions to those to whom they belong, and if the commissioner becomes bankrupt, if he becomes bankrupt and is pursued, he ought to be seized and put in irons and remain there until those, to whom the commissions belong, have made an arrangement with the said commissioner. And this chapter was made for this reason, for many a commissioner would become bankrupt, if he knew that no evil or damage or prejudice could accrue to him, and for this reason the conditions above said have been laid down.

Chapter clxxvii. Of the managing owner who

If any managing owner of a ship or vessel shall carry merchandise of his own or commissions, and shall be there where the ship has made her port, and the ship

[1] *chapters*] The chapters here referred to are chap. clxvi. and clxvii.

[2] *the gain*] The same principle is upheld in chap. clxv.

nau per negocis propis.

e la nau sera spatxada que no sta sino per ell que no es espatxat, e no pot vendre la sua mercaderia; si la nau pendra algun dan, ell es tengut de fer esmena als personers, si donchs ell no u havia empres ab los personers com ell parti d'ells, la on la nau havia carregat. E si ell ho havia empres ab los personers, ab tots o ab partida, e ells lo y havien atorgat que ell pogues romandre, e romania e trametia la nau; si la nau pendra algun dan, ell no es tengut de esmena als personers. Empero, si lo senyor de la nau romandra, perco, car no pora haver lo nolit e no y romandra per res que ell hi haia a fer, sino per lo nolit a recaptar; e ell ne trametra la nau perco que no y faca messio, e ella pendra algun dan, lo senyor de la nau no es tengut de fer esmena als personers, pus que per profit de la nau sera romas, e no per res que hagues a fer. E aco deu esser menys de tot frau.

Capitol clxxviii. De testimoni de mariners en contrast de patro ab mercaders.

Senyor[1] de nau o leny qui haura contrast ab mercaders, los mariners de la nau no poden fer testimoni al senyor de la nau ne als mercaders, a lur prou ne a lur dan del un ni del altre, stant en lo viatge: mas lo cartolari deu fer testimoni e esser mijancer entre ells. Mas empero, com la nau haura fet viatge, e los mariners seran de si meteixs, que no seran tenguts al senyor de la nau, la donchs poran fer testimoni al senyor

[1] *Senyor*] Esp. 124, chapter clxxxv. begins here with the Rubric "Senyor de nau o de leyn qui aura contrast ab los mercaders."

shall be ready, so that nothing prevents her being despatched but himself, and he cannot sell his merchandise, if the ship incurs expenses, he ought to pay them out of his own money. And if she remains there for him to sell his own merchandise, and he sends back the vessel, if the vessel incurs any damage, he is bound to make compensation to the part-owners, unless he has agreed with the part-owners when he parted from them at the place where he loaded the vessel. And if he agreed with the part-owners, either with all of them or with part, and they consented that he might remain, and he has remained and sent back the ship, if the ship suffers any damage, he is not bound to indemnify the part-owners. Nevertheless, if the managing owner of the ship shall remain because he cannot recover the freight, and shall not remain for anything which he has himself to do, except to recover the freight, and he shall send back the ship that she may not incur expense, and she shall suffer any damage, the managing owner of the ship is not bound to indemnify the part-owners, since he has remained for the advantage of the ship, and not for anything which he had himself to do. And this should be done without any fraud.

neglects his ship for his private affairs.

Chapter clxxviii. Of the testimony of mariners in disputes of the managing owner with merchants.

If a managing owner of a ship or vessel shall have a dispute with the merchants, the mariners of the ship cannot bear testimony [1] either for the managing owner of the ship nor for the merchants, for the benefit or for the prejudice of the one or the others during the voyage, but the ship's book ought to bear testimony and be the mediator between them. But nevertheless, when the ship has completed her voyage, and the mariners shall be by themselves, so that they are no longer bound to the managing owner of the ship, then they may bear testimony either for the managing owner of the ship or

[1] *testimony*] An exception has been made in cases of jetison in chap. liv.

de la nau, e als mercaders, ab que ells no sien personers del contrast, on seran demanats per testimoni, ne n'speren dan ne prou haver; que si n'esperaven dan ne prou haver, res que diguessen no hauria valor, e serien tenguts per falsaris.

Capitol clxxix. De testimoni de mercaders en contrast de patro ab mariners.

Mariners [1] qui hauran contrast ab lo senyor de la nau de algunes coses, qui no sien scrites en lo cartolari; los mercaders, qui seran en la nau, poden fer testimoni en lo viatge stant o que n'fossen exits, axi be al senyor de la nau com als mariners, ab que ells no fossen personers del contrast que seria entre ells, ne n'sperassen haver dan ne prou. E si los mariners havien contrast ab los mercaders, lo senyor de la nau pot fer testimoni, pus sien exits del viatge; mas stant en lo viatge, no, e que no sia personer del contrast que sera entre ells. Encara mes, lo un mariner pot fer testimoni al altre, pus sien exits del viatge, ab que no sia personer del contrast, en que sera tret en testimoni, ne n'esper dan ne prou. Empero los mariners poden fer testimoni, stant en lo viatge, al senyor de la nau e als mercaders per aquesta rao, co es a saber, per fet de git, o si per mal temps o per altra ventura la nau hagues anar en terra; car en aquell cas ne en aquella sao l'escriva no pot metre les convinences en lo cartolari. E perco fon fet aquest capitol: car si en aquell cas los mariners no poguessen fer testimoni, ne l'escriva no u hagues pogut metre en cartolari, lo senyor de la nau poria negar totes les convinences que hauria em-

[1] *Mariners*] Esp. 124, chapter clxxxvi. begins here with the Rubric "Mariners qui hauran contrast ab senyor de nau d'algunes coses."

for the merchants, unless they should be partners in the dispute in which they may be called upon to bear testimony, and may expect to have loss or benefit therefrom, for if they expect to have loss or benefit, nothing which they can say will be of any value, and they will be regarded as false witnesses.

Chapter clxxix. Of the testimony of merchants in a dispute of the managing owner with the mariners.

If mariners have a dispute with the managing owner of the ship upon any matters which are not written in the ship's book, the merchants who shall be on board the ship may bear testimony during the voyage, or when they have gone out of the ship, as well for the managing owner of the ship as for the mariners, provided that they are not partners in the dispute which has arisen between them, and do not expect benefit or loss from it. And if the mariners have a dispute with the merchants, the owner of the ship may bear testimony when they have finished the voyage, but not during the voyage, and provided that he is not a partner in the dispute which shall exist between them. Still more, the one mariner may bear testimony for another, when they have finished the voyage, provided he is not a partner in the dispute, in which he shall be produced as a witness, and does not expect loss or benefit. Nevertheless the mariners may bear testimony during the voyage for the managing owner of the ship and for the merchants in these cases, that is to say, in the case of jetison,[1] or if from bad weather or other misfortune the ship has to run ashore, for in this case and under these circumstances the ship's clerk cannot inscribe the contracts in the ship's book. And for this reason this chapter was made, for if in such a case the mariners could not bear testimony, and the ship's clerk has been unable to enter the matter in the ship's book, the managing owner of the ship may deny all the contracts which he has made with the merchants, which would be likely to turn to his detriment, and may affirm

[1] *jetison*] This case has been provided for in chap. liv. as being a case of necessity.

preses ab los mercaders, que a ell deguessen tornar a dan, e dirca tor co que a si meteix tornas a profit, e los mercaders farien atretal al senyor de la nau. Per aquesta rao poden fer testimoni los mariners; e en aytal cas stant en lo viatge, perco que frau algu no y puga haver; mas per altra rao no poden fer testimoni stant en lo viatge a prou ne a dan del senyor ne dels mercaders, per contrast que entre ells fos.

Capitol clxxx. Testimoni de mariner.

Si mercaders,[1] qui seran en nau, hauran algun contrast entre ells, e trauran los mariners en testimoni, los mariners poden fer aquell testimoni en que seran demanats, sia que ells sien encara al viatge o que sien exits, ab que no n'sperassen dan ne prou haver, ne volguessen mes lo prou de la una part que de l'altra, ne n'haguessen pres servey; qui si ells amaven mes lo profit de la una part que de l'altre, o ells ne haguessen pres servey; si provat los podia esser, ells serian tengut de retre tot lo dan el tot lo greuge e tot lo interes que aquella part ne haura sostengut per culpa d'aquell testimoni, que aquells li hauran fet. Encara mes, que l's ne poria metre e affrontar e destrenyer ab la senyoria; e mes encara, que no serien per nul temps creguts de res que ells diguessen; e a alguns que l's cridas perjurs, senyoria no li n'daria alguna pena, per testimonis que ells ne donassen, que ans caurien ells en doble pena, qui aytal testimoni fals haurien fet. E fon fet perco aquest capitol, car moltes vegades son los mercaders en alguns lochs, e no ha ab ells si no tan solament los mariners, e en presencia de ells los mercaders faran algunes convinences o empreniments dels uns als altres; e per ventura lo un o l'altre penedirse ha de aco que haura fet, e com aquell altre mercader

[1] *Si mercaders*] Esp. 124, chapter clxxxvii. begins here with the Rubric "Si mercaders qui seran en nau o en leyn auran algun contrast entre ells."

all those which will turn to his own profit, and the merchants may do the like as regards the managing owner of the ship. For this reason the mariners may give evidence in such a case during the voyage, in order that there may be no fraud: but for other reasons they may not give evidence during the voyage for the benefit or to the prejudice of the managing owner or of the merchants, in any dispute which may arise between them.

Chapter clxxx. The testimony of mariners.

If merchants who shall be in a vessel have any dispute amongst themselves and produce mariners as witnesses, the mariners may give evidence upon the matter upon which they are called, whether they be still on the voyage or not, provided that they do not expect to have any benefit or prejudice therefrom, nor wish success to either party more than to the other, and that they have not taken a present,[1] for if they desire more the profit of the one party than of the other, or if they have taken a present, and if that can be proved, they shall be bound to replace all the loss, and all the prejudice and all the interest which the other party shall have sustained through their fault. Still more, he may give them in custody and confront them and prosecute them before the local authorities, and more still, they shall never more be believed in any thing which they may say, and the local authorities shall not inflict any punishment upon those who may call them "perjured" for the testimony which they have given; on the contrary, they shall incur a double punishment since they have given such false evidence. And for this reason this chapter was made, for oftentimes there are merchants in places and there is no one with them but mariners, and in the presence of those mariners they make certain contracts and covenants with one another, and by chance one of them repents himself of that which he has done, and when the other merchant demands

[1] *present*] The word "servey" is used in a similar sense in chapter clxvii.

li demanara la convinenca que entre ells sera empresa, aquell li pora negar, e si aquell la li negava, aquell mercader ne sostendria gran dan; e per aquella rao deven fer testimoni los mariners dels contrasts que seran entre los mercaders, perco que algun frau no puga entre ells esser.

Capitol clxxxi. De loguer de notxer o mariners qui iran a cosiment.

Senyor[1] de nau o leny, qui menara ab si en viatge o en viatges lo notxer a cosiment, lo senyor de la nau deu donar de loguer al notxer, axi com pendra lo millor proer de la nau o altre des cominals: encara mes, segons bondat e valor que l'notxer haura. E si per ventura los mariners iran a cosiment del senyor de la nau, lo senyor de la nau los es tengut de donar loguer segons que ells affanyaran o hauran affanyat, e segons la bondat que ells hauran, e lo servey que faran; e aco deu esser a coneguda del notxer e del scriva, que ells lo y deian dir per lur sagrament que ells fet han al senyor de la nau be e lealment: ja aquells mariners qui seran a cosiment, quin loguer hauran affanyat e quin no, e que ells no y diguen per voluntat ne per malvolenca, ne per servey que hom los hagues promes, ne per mal que ells volguessen a algu de aquells mariners qui en la nau serien a cosiment: e aco deven ells dir sots pena del sagrament be e lealment al senyor de la nau, e lo senyor de la nau los es tengut de dar aquell loguer, que l'notxer e l'escriva li hauran dit per lur sagrament; e no y deu res contrastar.

Capitol clxxxii. De dau pres per

Senyor[2] de nau o leny qui sera en plaia o en port o en altre loch ab la sua nau, e los mercaders, qui ab ell seran, li diran e li denunciaran que ell se

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[1] *Senyor*] Esp. 124, chapter clxxxviii. begins here with the Rubric "Senyor de nau o de leyn "qui menara ab si en viatge o en "viatges." The words "a cosiment lo notxer o mariners" are added in black ink.

[2] *Senyor*] Esp. 124, chapter clxxxix. commences here with the Rubric "Senyor de nau o de leyn "qui sera, en plaia o en port."

from him the contract which has been agreed upon between them the other may deny it, and if the other deny it the merchant will suffer great loss, and for this reason the mariners ought to bear testimony in the disputes which shall take place between the merchants, in order that no fraud may be worked against any one.

Chapter clxxxi. Of the wages of the mate or of the mariners who sail at discretion.

If a managing owner of a ship or vessel takes with him on a voyage or voyages a mate at discretion,[1] the managing owner of the ship ought to give for wages to the mate as much as to the best sailor of the forecastle, or any other of the crew, still further according to the good qualities and worth which the mate exhibits. And if by chance the mariners sail at the discretion of the managing owner of the ship, the managing owner of the ship is bound to give them according as they have deserved or shall deserve, and according to the good qualities which they exhibit and the service which they shall do, and this ought to be adjudicated by the mate and the ship's clerk, and they ought to say upon their oath, which they have taken to the managing owner of the ship well and loyally, what those mariners, who sail at discretion, have deserved and what not, and they ought not to say it from affection or malice, nor for the sake of any present which has been promised to them, nor from a wish to do harm to any of the sailors who shall be on board the ship at discretion, and this they ought to say under penalty of their oath well and loyally to the managing owner of the ship, and the managing owner of the ship is bound to give them those wages which the mate and the ship's clerk shall have said upon their oath, and he ought not to dispute any thing.

Chapter clxxxii. Of damage suffered

If a managing owner of a ship or vessel be on a coast or in a port, or in another place, and the merchants who are with him say and declare to him that he should

[1] *discretion*] This manner of hiring in the case of the ship's clerk is mentioned in chapter xv.

falta d'ormeig.

ormeig, e lo senyor de la nau hi metra flix, que ne s'ormeiara, o per ventura ell no haura tota la exarcia que promesa los haura, e per aquestes raons desusdites los mercaders ne sostendran dan; lo senyor de la nau es tengut de restituir aquell dan que l's mercaders hauran sostengut per aytal rao. E si lo senyor de la nau no ha de que pagar, deuse vendre la nau; e si la nau no y basta, e lo senyor de la nau ha alguns bens, aquells se deven vendre per fer compliment a aquells mercaders; empero, salvo los mariners que no perden lur loguer. Mas, los personers no son tenguts de res esmenar, sino la part que hauran en la nau, que altres bens no. E fon fet aquest capitol car molt senyor de nau[1] plany exarcia, e no s'pot ormeiar, e per aco la nau o leny pert se e la roba dels mercaders.

Capitol clxxxiii. De nau qui s'pert en terra de Sarrains.

Senyor[2] de nau o leny qui sera o navigara en terra de Sarrains, e li vendra cas de ventura, que per mal temps, o per lenys armats de enemichs, perdra lo leny o nau, si ell pert la nau o leny per la rao desusdita, ell no es tengut de res a donar als mariners, si donchs ell no l'perdra al loch on ell hagues tot son nolit; que si ell ha tot son nolit, ell es tengut de dar tot lo

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[1] *De nau*] There is a variation of the text in Esp. 124, *e.g.*, "Car molt "senyor de nau o de leyn plany la "exarcia e vaiga tant que s'es mes "tant mal temps, que ell no pot "donar consell a ormeiar sa nau "o son leyn e axi la nau ol leyn "pert sa e la roba dels mariners."

[2] *Senyor*] Esp. 124, chapter cxc. begins here with the Rubric "Sen-"yor de nau o de leyn, qui sera e "navegara en terra de Serreins."

bring his vessel up, and the managing owner of the vessel shall put out a cable[1] which does not bring her up securely, and by chance he has not all the ship's apparel which he has promised to have,[2] and for these reasons the merchants suffer loss, the managing owner of the ship is bound to make good that loss which the merchants have sustained for that reason. And if the managing owner of the ship has not wherewithal to pay, he ought to sell the ship to complete the payment to those merchants, saving, however, to the mariners that they lose not their wages. But the part-owners are not bound to compensate the merchants except to the extent of their shares[3] in the ship, and their other property is exempt. And this chapter was made, because many a managing owner of a ship is sparing of[4] the ship apparel and does not bring her up securely, and for that reason the ship or vessel is lost and the goods of the merchants. from failure of tackle.

Chapter clxxxiii. Of a ship which is lost in a land of Saracens

If a managing owner of a ship or vessel shall be in or sailing off a land of Saracens, and a case of misfortune overtakes him so that from bad weather or from armed vessels of the enemy he loses his ship or vessel, if he loses his ship or vessel for the reason above said, he is not bound to give anything to the mariners,[5] unless he shall lose his vessel at a place where he has received all his freight; for if he has received all his freight, he is bound to pay all their wages to the ma-

[1] *a cable*] The phrase "haura "mes flix" is used in a similar sense in chap. clviii.

[2] *promised to have*] This is discussed in chap. xlvii.

[3] *their shares*] This principle has been previously recognised in chapters xxvii. and cxli.

[4] *is sparing of*] The context seems to be equally satisfied whether the passage is construed to signify that the managing owner is niggardly in supplying tackle, or is sparing in the use of it. The latter sense seems to be that of MS. Espagnol 124.

[5] *the mariners*] The principle that with the diminution of freight, the wages of the mariners should undergo diminution is recognised in chapters lix. and cxlvii.

loguer als mariners: mas empero, qualsevulla pati que l'senyor de la nau o leny fara ab los mercaders, a aquell pati meteix deven esser los mariners. Mas, si lo senyor de la nau o leny devia als mariners loguers per altres viatges; ell los es tengut de pagar axi com en lo capitol qui desus es dit se conte. Mas, senyor de nau o leny qui per aytal rao, com desus es dita, perdra sa nau o leny, no es tengut de donar leny ne vianda als mariners, entro que sien en terra de Crestians, perco car ell ha perdut tot quant havia, e per ventura mes que no havia. Fon fet perco aquest capitol, que pus lo senyor de la nau haura perduda sa nau, no es tengut de donar leny ne vianda a mariners tro sien en terra de Crestians pus que no n'ha per ell.

Capitol clxxxiv. Casos en que lo patro deu demanar los personers per lo nolieiar.

Senyor[1] de nau o leny qui nolieia la sua nau per anar en terra de Sarrains o en loch perillos, si ell es en loch on haia personers, ell los ne deu demanar abans que ferm lo viatge. E si ell los en demana, e los personers o volen, ell pot nolieiar, que personer algu no u pot vedar. E si ell nolieia que no l's ne deman, los personers li poden contrastar e poden encantar ab ell, perco car no l's haura demanats; e si demanats los ne hagues, los personers no l'pogueren encantar tro que fos vengut del viatge. E si los personers encanten ab lo senyor de la nau o leny

[1] *Senyor*] Esp. 124, chapter cxci. here commences with the Rubric "Senyor de nau o de leyn qui nc- | "liejara la sua nau per anar en "terra de Serreins."

riners: nevertheless whatever compact the managing owner of the ship or vessel shall make with the merchants, to that same compact the mariners are bound. But if the managing owner of the ship owes wages to the mariners for other voyages, he is bound to pay them, as is declared in a preceding chapter.[1] But the managing owner of the ship or vessel, who for such reason as above said shall lose his ship or vessel, is not bound to furnish a ship and provisions to the mariners until they are in a land of Christians, because he has lost all that he has, and perhaps more than he has. This chapter was made for this reason, that when the managing owner of a ship has lost his ship he is not bound to furnish a vessel or provisions to the mariners until they are in a land of Christians, for he has not them for himself.

Chapter clxxxiv. Cases, in which the managing owner ought to request from the part-owners their consent to his letting the ship for freight.

A managing owner of a ship or vessel who lets his ship to go to a land of Saracens, or to a perilous place, if he is in a place where he has part-owners, he ought to request their consent before he settles the voyage. And if he requests their consent, and the part-owners are willing, he may let the vessel for freight, so that no part-owner can forbid it. And if he lets the vessel without asking their consent, the part-owners may object and put up the vessel to sale against him,[2] because he has not requested their consent; and if he has asked their consent, they cannot put up the vessel to sale until he has returned from the voyage. And if the part-owners put up the vessel to sale against the

[1] *preceding chapter*] Chapter cxciii. is here intended.

[2] *to sale against him*] The phrase "encantar ab ell" occurs in chapter x., and it seems to signify to force a sale against the will of the managing owner, subject to the option that he must either buy the shares of the part-owners or sell his own share. See also chapter xi. as to the right of the part-owners to force the managing owner of a ship to an option. It was also the law of the Commune of Oleron as set out in the Customs of that Commune, chap. lxiv. vol. ii. p. 343.

qui nolieiat haura menys de lur sabuda, e ell exira de la nau o del leny per encant o per qualsevol rao, e los personers retendran la nau o leny, aquella nau o leny deu seguir lo viatge a aquell mercader qui nolieiada la haura per aquell preu o nolit, que l'mercader haura empres ab aquell qui la donchs era senyor com ell nolieia. Perque se n'guart quascu, qui fara part en nau o leny, que qualsevulla cosa que aquell fara o empendra ab mercaders, allo se haura a seguir. Mas, si lo senyor de la nau sera en loch on no haura personer algu, ell pot nolieiar, e anar en tot loch on ell se vulla, e si la nau o leny pendra algun damnatge, personer algu no li pot fer demanda per aquella rao. Mas, si ell ho jugava o baratejava o s'perdia per algu rao, que fos culpa sua, los personers li n'poden fer demanda. Mas, senyor de nau qui nolieiara per anar en terra de Crestians, no es tengut de demanar personers alguns si no s'vol, ne personer no la pot encantar, pus que ell le haura nolieiada, tro al torn del viatge. Mas lo senyor de la nau o leny deu donar fianca al personer si la li demana, que ell no mut viatge tro a qui haia tornada la nau o leny en poder dels personers, e la fianca que dara, que no sia tenguda sino tan solament a us e a costum de mar. E si per ventura lo senyor de la nau nolieiara per anar en los desus dits lochs, e los personers seran en lo dit loch e sabran que haura nolieiat o no u sabran, e lo senyor de la nau

managing owner of the ship, who has let the ship without their knowledge, and he shall go out of[1] the ship or vessel by the sale or by some other cause, and the part owners shall retain the ship or vessel, that ship or vessel ought to fulfil the voyage for that merchant who has freighted her for the price or freight, which the merchant has agreed to with him, who was the managing owner of the vessel when he freighted her. Wherefore every one should beware, who takes a share in a ship or vessel, that whatever thing the managing owner shall do or undertake with the merchants, she is bound to fulfil it. But if the managing owner of the ship shall be in a place where there is no part-owner, he may let the vessel on freight, and go to any place where he pleases, and if the ship or vessel takes any damage, no part-owner can make any claim upon him for that reason. But the managing owner of a ship who shall let her to go to a land of Christians is not bound to request the consent of any part-owners, if he does not choose, nor can any part-owner put up the vessel to sale, when he has let her, until his return from the voyage.[2] But the managing owner of the ship or vessel ought to give security[3] to the part-owner, if he demands it of him, that he will not change the voyage, until he has restored the ship or vessel into the power of the part-owners, and the security which he shall give shall not be bound otherwise than according to the use and custom of the sea. And if by chance the managing owner of the ship shall let it to go to the abovesaid places, and the part-owners shall be in the said place and shall know that he has let it, or shall not know it, and the managing owner of the ship has not told it to them, and they have

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[1] *go out of*] that is, cease to be managing owner in consequence of having sold his share.

[2] *voyage*] This is the general rule as set out in chap. x.

[3] *security*] This principle has been incorporated into the maritime law of England.

no l's ho haura dit ni ells a ell res contrastat; e aquell viatge la nau o leny se perdra o pendra algun damnatge, los personers no poden fer alguna demanda, e lo senyor de la nau no es tengut de res a respondre a ells.

Capitol clxxxv. De rescat o avinensa ab nau armada.

Senyor[1] de nau o leny, qui en mar delivra o en port o en plaia o en altre loch se encontrara ab lenys armats de enemichs, lo senyor de la nau pot parlar e fer avinenca ab los comits et ab lo almirall per quantitat de moneda, perco que ells no fassen mal a ell ne a res de la sua nau. E si en aquella nau o leny ha mercaders, ell los deu dir lo pati que fara, o haura fet ab ells, co es ab los comits e ab l'almirall d'aquella armada, e tots ensemps deuen se acordar, e deven pagar aquella remso, la qual lo senyor de la nau o leny haura empresa ab los comits e ab l'almirall d'aquella armada. E deuse pagar per lo cominal de la roba per sou e per livra, o per besant; e lo senyor de la nau deu hi metre per la meytat de aco que valra la nau o leny. E si mercaders no y ha en la nau o en lo leny lo senyor de la nau se deu a consellar ab los panesos, e ab lo notxer, e ab los proers. E si lo senyor de la nau paga aquella remso que desus habem dita, ab consell e ab consentement de tots aquells qui desus son dits, los mercaders de qui la roba sera, no y deven ne y poden res contrastar, ab que l'senyor de la nau pag per

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[1] *Senyor*] Esp. 124, chapter cxcii. here begins with the Rubric "Senyor de nau o de leyn qui en mar delivre o en port o en plage."

not objected at all, and during his voyage the ship or vessel is lost or has suffered any damage, the part-owners cannot make any demand, and the managing owner of the ship is not responsible to them for anything.

Chapter clxxxv. Of ransom or arrangement with an armed ship.

The managing owner of a ship or vessel, who in the open sea or in port, or on any coast, or in other place shall meet with armed vessels of the enemy, may parley with and make a convention[1] with the captains and with the admiral[2] for a quantity of money in order that they may do no harm to him nor to his ship. And if there are merchants on board that ship or vessel, he ought to tell them the convention which he will make or has made with them, that is, with the captains and the admiral of that armed fleet, and altogether ought to agree and ought to pay that ransom which the managing owner of the ship or vessel has agreed to with the captains and with the admiral of that armed fleet. And they ought to pay for the goods in common by shillings and pounds or by besants, and the managing owner of the ship ought to contribute for half the value[3] of the ship or vessel. And if there be no merchants on board the ship or vessel, the managing owner of the ship ought to take counsel with the officers of the poop and with the mate, and with the officers of the forecastle. And if the managing owner of the ship pays the ransom of which we have spoken with the counsel and with the consent of all those above mentioned, the merchants to whom the goods belong ought not to dispute anything, provided the managing owner of the ship pays for half

[1] *convention*] It has been the policy of the British Parliament to discountenance the ransoming of captured vessels by inflicting a penalty on any British captor who restores upon ransom, and by declaring all ransom bills given by British subjects to be null and void.

[2] *the admiral*] The use of this term suggests that this chapter was not drawn up until after the Fourth Crusade, when the term came into use.

[3] *half the value*] As in a case of jetison, chap. l.

la meytat d'aco que valra la nau. Mas empero, si lo senyor de la nau o leny se encontrara, axi com desus es dit, ab lenys armats qui no sien de enemichs, e ell los vol donar estrena o refrescament, si en la nau ha mercaders, ell los ho deu dir e demanar, si ells ho volen los mercaders, e lo senyor de la nau ho deu dir e fer ab consell de tots aquells, qui desus son dits. E si lo senyor de la nau fa aco, deuse pagar axi com desus es dit. Empero, si lo senyor de la nau no u fara ab voluntat dels mercaders o ab consell d'aquells qui desus son dits, e ell per sa autoritat fara pati e dara refrescament sens sabuda dels mercaders e sens consell d'aquells qui desus son dits, lo senyor de la nau ho deu pagar del seu propi; que los mercaders no li son tenguts de res a dar, ne a retre, de la messio o del pati des refrescament, que ell haura donat a aquells lenys armats.

Capitol clxxxvi. De rescat o convinenca ab lenys armats de enemichs.

Si alguna[1] nau o leny sera en terra de enemichs, o en loch dubtos, stant aqui carregat de tot o de partida, vendran aqui lenys armats de enemichs, e lo senyor de la nau o del leny parlara pati o l'fara parlar a aquells lenys armats, perco que ells no fassen mal a res que en la nau o leny sera, e aquell pati que ell parlara o fera parlar, si los mercaders seran en la nau o en lo leny ab ell ensemps, tots o la major partida, ell los deu dir aquell pati, que ell ha fet o fet fer ab aquells comits de aquells lenys armats; e ab consell, e

[1] *Si alguna*] Esp. 124, chapter cxciii. here begins with the Rubric "Si alguna nau o algun leyn sera en terra de anemichs."

of that which the ship is worth. But, nevertheless, if the managing owner of the ship or vessel meets, as above said, with armed vessels which shall not be enemies, and he wishes to give them a present[1] or refreshment, if there are merchants in the ship, he ought to speak to them and enquire if the merchants are willing to do so, and the managing owner of the ship ought to say and do this with the counsel of all those above mentioned. And if the managing owner of the ship does so, he ought to be paid as above said. Nevertheless, if the managing owner of the ship does not act with the consent of the merchants or with the counsel of those above mentioned, and by his own authority makes a convention or gives refreshment, without the knowledge of the merchants, and without the counsel of the above-mentioned persons, the managing owner of the ship ought to pay it out of his own property, for the merchants are not liable to give him any thing, nor to replace any thing of the expense or of the compact for the refreshment which he has given to those armed vessels.[2]

Chapter clxxxvi. Of ransom or compact with the armed vessels of enemies.

If any ship or vessel shall be in the land of enemies or in a suspected place, being there loaded either in whole or in part, and the armed vessels of enemies come there, and the managing owner of the ship or vessel shall parley or shall cause a parley to be held with those armed vessels for a convention, that they shall not do any harm to any thing which is in his ship or vessel, if the merchants be on board together with him in the ship or vessel, the whole or the greater part, he ought to tell them of the convention which he has made or caused to be made with the captains of those armed vessels; and with the counsel and with the consent of

[1] *a present*] The word "estrena" corresponds to the French word "etrennes," and probably means here "a present for good luck."

[2] *armed vessels*] The other chapters concerned with the law of prize are chapters clxxxvi., clxxxvii., cciii., ccxxxi., ccxliii., and cclxv.

ab voluntat dels mercaders ell ho deu donar, e los mercaders son hi tenguts de pagar per sou e per livra segons que hauran roba en la nau o en lo leny. E si per ventura, los mercaders no eren en la nau o leny, tots ne partida, e eren en loch que l'senyor de la nau o leny hagues spay, que ell los pogues fer asaber aquell pati que ell hauria fet e fet fer ab aquells leny armats per salvar si e tota la roba, ell es tengut que l's ho deu fer asaber. E si ell no havia spay que ho pogues fer asaber als mercaders, lo senyor de la deu fer en axi, que tot co que fara, que ho faca ab consell de tot lo cominal de la nau ; e si ell ho fa en axi, los mercaders hi son tenguts de metre e de pagar tot en axi com si tots ells hi eren stats, que en res no y deven ne hi poden contrastar. Empero, si lo senyor de la nau fara algun pati ab aquells lenys armats, e los mercaders seran en la nau, tots o la major partida, o seran en loch que ell los ho pogues fer asaber, o no u fahia, aquell pati que ell los haura fet o fet fer, e no haura demanats los mercaders, pus que ells fossen en aquell loch, que ell fer ho pogues, a aquell pati aytal que ell haura fet, los mercaders no son tenguts de res a metre, jat sia aco que la roba sia en la nau o leny tota o partida, perco que no l's ne haura demanats. Mas empero, si ells seran en loch que no l's ne puga demanar, e lo senyor de la nau fara aquell pati ab consell de tots aquells qui desus son dits, los mercaders hi son tenguts de pagar axi com desus es dit. E si per ventura lo senyor de la nau fara aquell pati, menys de sabuda dels mercaders, e menys de consell de aquells qui desus son dits, aquell pati que haura dit per sa autoritat, e menys de

the merchants he ought to fulfil it, and the merchants are bound to contribute by shillings and pounds, according as they have goods in the ship or vessel. And if by chance the merchants are not on board the ship or vessel, all or in part, and they are in a place where the managing owner of the ship or vessel expects that he can make them aware of the convention, which he has made or has caused to be made with those armed vessels, to save himself and all the goods, he is bound to make them aware of it. And if he has no expectation that he can make the merchants aware of it, the managing owner of the ship ought to act in such a manner, that whatever he may do, he should do it with the counsel of the whole ship's company, and if he so does, the merchants are bound to contribute and to pay all, precisely as if they were present, and they may not and cannot dispute anything. Nevertheless, if the managing owner of the ship shall make any convention with those armed vessels, and the merchants shall be in the ship, all or the greater part, or shall be in a place where he can make them aware, and he does not do so, of the convention which he has made or caused to be made with them, and respecting which he has not consulted the merchants, when they were in the place, and he might have done so, to such a convention so made by him the merchants are not bound to contribute any thing, although it may be that their goods are all or in part on board the ship or vessel, because he has not consulted them. But nevertheless, if they were in a place where he could not consult them, and the managing owner of the ship makes the convention with the counsel of all the above-mentioned persons, the merchants are bound to contribute as above said. And if by chance the managing owner of the ship shall make that convention without the knowledge of the merchants and without the counsel of the above-mentioned persons, that convention which he has made of his own authority, and without

sabuda e de consell de negu, lo senyor de la nau o leny ho deu tot pagar del seu propi, que negu no y es tengut de res a metre, perco, car ell ho haura fet menys de sabuda de tots aquells qui desus son dits. Empero, si la nau o leny sera en algun dels sobredits lochs e haura descarregat, e entre los mercaders e lo senyor de la nau sera empres que l'senyor de la nau deia esperar los mercaders, e los mercaders que deian haver spatxat lo senyor de la nau, si donchs en aquell temps vendran aqui lenys armats, e lo senyor de la nau fara pati ab ells, perco que ell no li facen mal, o encara si li vendra cas de ventura que s'perdra la nau o leny; en aquell pati o en aquella perdua, que dins aquell temps, que l'senyor de la nau los deu esperar, sera feta, no y son tenguts de res a metre, pus que ells hauran descarregat, si donchs no li volien fer alguna gracia. E si, per ventura, los dits mercaders no hauran espatxada aquella nau o leny a aquell temps que empres o promes hauran, e si passat aquell temps vendran aqui lenys armats, e lo senyor de la nau haura a fer pati o y perdra la nau, los dits mercaders son tenguts de pagar aquell pati, o aquella perdua, que l'senyor de la nau o leny haura feta per culpa d'ells, qui no l'hauran spatxat en aquell temps que entre ell e los mercaders era empres.

Capitol clxxxvii. De roba levada.

Si algun [1] senyor de nau o leny haura carregat en algun loch de roba de mercaders, e que tota sia de algun mercader particular, per anar descarregar en algun altre loch, lo qual loch, on ell descarregar deura, sera ja empres entre ell e los dits mercaders o mercader; si sera cas de ventura, que aquella nau o leny

[1] *Si algun*] Esp. 124, chapter cxciv. commences here with the Rubric "Si algun senyor de nau o "de leyn aura carregat en algun "loch de roba de mercaders."

the knowledge or counsel of any person, the managing owner of the ship or vessel must execute with his own money, for no one is bound to contribute anything, because he has made the convention without the knowledge or counsel of any of the persons above mentioned. Nevertheless, if the ship or vessel shall be in one of the above-mentioned places, and shall have discharged her cargo, and it shall have been agreed upon between the merchants and the managing owner of the ship that the managing owner of the ship should await the merchants, and that the merchants should despatch the ship, if during this time armed vessels come there, and the managing owner of the ship makes a convention with them, in order that they may do him no harm, and further if a case of misfortune supervenes that the ship or vessel is lost, in that convention and in that loss, which shall have taken place within that time, during which the managing owner of the ship ought to await the merchants, they are not bound to share, since they have discharged their goods, unless they mean to do him a favour. And if by chance the said merchants shall not have despatched that ship or vessel within the time which they had agreed to and promised, and if when that time has passed, armed ships come there, and the managing owner of the ship has to make a convention, or shall lose his ship, the said merchants are bound to pay the sum agreed upon or that loss, which the managing owner of the ship or vessel has incurred through their fault, as they have not despatched her within the time agreed upon between him and the merchants.

Chapter clxxxvii. Of goods captured.

If any managing owner of a ship or vessel has loaded the goods of merchants in any place, or if the entire cargo belong to any one merchant in particular, to go and discharge in some other place, which place where he is to discharge shall already have been agreed upon between him and the said merchants or merchant, if a case of misfortune supervenes that the ship or vessel

se encontrara ab alguns lenys armats o no armats de enemichs; si aquelles males gents, qui en aquells lenys armats o no armats seran, li tolran o se n'portaran la terca parte de la roba, o les dues parts, o les tres, e no li leixeran sino tant solament la quarta part, o mes o menys; si com lo senyor de la nau o leny sera junt alla, on devia descarregar aquella roba que romasa li sera, e encara aquella qui tolta li sera stada, si lo senyor de la nau o leny se retendra aquella roba que romasa li sera, que no la vulla donar a aquells mercaders o mercader qui rebre la devra, si donchs ell o ells no li paguen axi be lo nolit d'aquella roba que tolta li sera, com de aquella que sera romasa, e que ell haura portada, lo senyor de la nau no u pot fer ne deu ab justa rao. Per qual rao? Perco, car nengu mercader no es tengut de pagar nolit sino d'aytanta roba, com lo senyor de la nau o leny li delivra en lo cas desusdit. Empero es axi a entendre en tal cas com desus es dit, salvo empero, qui si los mercaders, qui aquella roba, axi com es desus es dit, hauran mesa en aquella dita nau o leny, si ell la agermanaran, o si los dits mercaders eren en aquella nau o leny, e quant hagueren vista d'aquells lenys armats la agermanaran, que si algun cas los esdevenia que la una roba fes a l'altra; si lo agermanament desus dit sera fet, axi com damunt se conte, aquella roba que restaurada sera, deu esser comptada ab aquella que sera perduda per sou e per livra. E si lo senyor de la nau o leny e los

meets with any vessels armed or not armed of the enemy, if those lawless people, who are on board of those vessels armed or unarmed, shall seize and carry off the fourth part of the goods, or two such parts, or three such parts, and shall only leave one fourth part or more or less, if when the managing owner of the ship or vessel arrives there, where he ought to discharge those goods, which shall remain, and likewise those which have been carried off, if the managing owner of the ship or vessel shall retain the goods which shall remain, so that he will not give them up to those merchants or merchant who ought to receive them, unless he or they pay him as well the freight of the goods which have been carried off as of those which remain, and which he has conveyed safely, the managing owner of the ship cannot do so on any just grounds. For what reason? Because no merchant is bound to pay freight [1] except for so much goods as the managing owner of a ship or vessel delivers to him in the above case; nevertheless, it is to be understood in such a case as above said, with this saving, that if the merchants who have put the goods on board the said ship or vessel, have associated them,[2] or if the said merchants are in that ship or vessel, and when they have seen those armed vessels, they have associated them, so that if any misfortune overtake them, the one portion of goods shall answer for the other, if the association above said shall have been made as above explained, the goods which shall be recovered shall be reckoned with those that have been lost by shillings and pounds. And if the managing owner of the

[1] *freight*] This is in accordance with the law of Rome, Dig. lib. xiv. tit. 11, fr. 2, § 2. De lege Rhodia de jactu.

[2] *associated them*] The practice of "agermanament" at the commencement of the voyage has been referred to in chapter lxvii., and in the presence of danger from shipwreck in chapters cli. and clii.

dits mercaders o mercader, di qui sera aquella roba desus dita, sera en guerra o de guerra ab aquelles males gents qui aquella roba los hauran tolta, lo cors d'aquella nau o d'aquell leny qui restaurat o romas sera, deu esser comptat per sou e per livra ab aquella roba que perduda sera, e ab aquella que sera restaurada. E axi lo senyor de la nau o leny deu haver aytant de nolit com per sou e per livra li esdevendra, e de res als coses los dits mercaders o mercader no li son tenguts. Empero, si la roba no sera stada agermanada, axi com desus es dit, la roba que restaurada sera no es tenguda de ajudar a esmenar aquella que perduda sera, ne encara los mercaders, qui la roba hauran perduda, no son tenguts de res a donar a aquell senyor d'aquella nau o leny, a qui ells aquella roba, que perduda sera, havien nolieiada, ni lo senyor de la nau o leny a ells, si donchs los dits mercaders provar o mostrar no poran, que per culpa o ab sentiment o ab voluntat d'ell sera feta aquella tolta o aquella robaria. E si los dits mercaders provar o mostrar ho poran, lo dit senyor de la nau los es tengut de tot a retre e esmenar sens tot contrast. E si los dits mercaders provar ne mostrar justament no u poran, lo senyor de la nau o leny no l's es de res tengut. Empero, los dits mercaders o mercader, de qui sera aquella roba qui restaurada sera, son tenguts de donar e pagar tot lo nolit d'aquella roba qui restaurada sera e de res als no. Empero, si los dits mercaders seran en guerra ab aquelles males gents qui la roba los hauran tolta, e lo senyor de la nau o leny ab les dites males gents en guerra no sera, lo cors de la nau o leny no deu esser comptat per sou ne per livra ab aquella roba que perduda sera, si donchs, axi com desus es dit, agermanat no sera, que la una roba ajudas a l'altra, si cas de

ship or vessel and the said merchants or merchant, to whom belongs the above-said goods, shall be at war with those evil-disposed people who have carried off those goods, the hull of the ship or vessel which shall be recovered or shall remain, ought to be reckoned by shillings or by pounds with the goods which have been lost, and with the goods which have been restored. And accordingly the managing owner of the ship or vessel ought to have as much freight as by shillings and pounds shall devolve to him, and the merchant or merchants are responsible for nothing more. Nevertheless, if the goods have not been associated as above said, the goods which shall be restored are not bound to assist to compensate for those which shall be lost, nor further are the merchants, who have lost their goods, bound to give anything to the managing owner of the ship or vessel, to whom they freighted the goods which have been lost, nor the managing owner of the ship or vessel to them, unless the said merchants can prove and show that the seizure and robbery was made through his fault or with his consent and with his will. And if the said merchants can prove and show this, the said managing owner of the ship is bound to restore the whole to him without any dispute. And if the said merchants cannot justly prove or show this, the managing owner of the ship or vessel is not bound to them in anything. Nevertheless the said merchant or merchants to whom belong the goods which shall be restored, are bound to pay all the freight of those goods which have been restored, and nothing else. Nevertheless, if the said merchants shall be at war with those evil-disposed men who have carried off the goods, and the managing owner of the ship or vessel shall not be at war with them, the hull of the ship or vessel ought not to be reckoned by shillings and pounds with the goods that are lost, unless as above said they have been associated together, so that the one part of the cargo shall aid the other part, if any misfortune

ventura hi vendra; e los dits mercaders no sien tenguts de pagar nolit sino de la roba que romasa los sera, axi com desus es dit. Empero, si lo senyor de la nau o leny sera ab aquelles males gents en guerra, e los dits mercaders ab ells en guerra no seran, lo cors de la nau o leny sia tengut de metre per sou e per livra a esmenar aquella roba que perduda sera; e lo nolit sia aytambe comptat per sou e per livra, axi be com lo cors de la nau o del leny, e axi be a la roba restaurada com a la perduda, si algun agermanament hi haura fet axi com desus es dit. E si entre ells agermanament fet no sera, la una roba no deu esser tenguda a l'altra de esmena a fer, mas qui struch sera, struch se romandra; e lo senyor de la nau no deu haver nolit sino de la roba que restaurada sera. E si lo senyor de la nau o del leny menara los mariners a viatge, no l's es de res tengut a donar de lurs loguers, sino axi com ell guanyara del nolit. E si, per ventura, los mariners hi iran a mesos, lo senyor de la nau no es tengut de pagar, sino en aquella forma que ell guanyara del nolit. Per qual rao? Perco, car a empatxament de males gents no esta algu salvo. Empero, si los dits mariners, qui a mesos seran acordats, hauran empres ab lo senyor de la nau o leny que ell los deia pagar per quascun mes co que ab ells empres lo jorn que ell los acorda, lo senyor de la nau o leny los es tengut de pagar per aytants mesos com ells havien servit abans que aquella robaria fos feta, haia ell lo nolit o no. Per qual rao? Perco, car avinenca lig venc. E si per ventura algun senyor de nau o leny

should happen, and the said merchants are not bound to pay freight except for the goods which shall remain, as above said. Nevertheless, if the managing owner of the ship or vessel shall be at war with those evil-disposed men, and the said merchants shall not be at war with them, the hull of the ship or vessel is liable to make compensation by shillings and pounds for the goods which shall be lost; and the freight shall be reckoned equally by shillings and pounds, as well as the hull of the ship or vessel, and as well for the goods restored as for the goods lost, if any association has been made as above said. And if no association has been made between them, the one portion of goods should not be liable to make compensation for the other portion of goods, but that, which has been unfortunate, must remain unfortunate; and the managing owner of the ship ought not to have his freight except for the goods which shall be restored. And if the managing owner of the ship or vessel shall hire the mariners by the voyage, he is not bound to pay them their wages beyond what he shall gain of freight. And if by chance the mariners shall sail by the month, the managing owner of the ship is not bound to pay them except in proportion to what he shall earn of freight. For what reason? Because nothing is safe from the assault of evil-disposed men. Nevertheless, if the said mariners, who have agreed to sail by the month, have agreed with the managing owner of the ship or vessel that he shall pay them every month that which he agreed with them on the day when he engaged them, the managing owner of the ship or vessel is bound to pay them for so many months which they have served before that robbery was made, whether he has freight or not. For what reason? Because the special contract prevails against the common law.[1] And if by chance any

[1] *the common law*] The special contract takes the case out of the operation of the common law. "Per-cioche accordo legge vince" is the Italian paraphrase of the passage.

sera aturat o detengut per senyoria o per males gents en algun loch; si aquell loch, on ell detengut sera, es loch on ell ne puga donar paraula als mariners, sia que los dits mariners vagen a viatge o que sien acordats a mesos, lo senyor de la nau ho deu fer, e no l's es tengut de res a donar de tot aquell temps que ell aqui haura stat per rao d'aquell deteniment, que fet li sera; perco, que per culpa d'ell no romandra que ell no anas a guanyar, si vedat no li era. Encara mes, que lo senyor de la nau o leny assats hi pert, pus que hi pert la vianda e consuma sa nau o son leny. Mas, empero, si lo senyor de la nau o leny sera detengut en algun loch per empatxament de senyoria o de males gents, si ell sera en loch on ell pogues donar paraula als sobre dits mariners, e ell no la l's dara, ans los tendra, e l's aturara ab si, ell los es tengut de pagar de tot aytant com ab ell estaran. Per que? Perco, car si ell si volia, ell los poria e l's poguera haver donada paraula. E pusque ell no u volgue, e l's volgue aturar e tenir ab si, es rao que l's deia pagar de tot aytant com ab ell estaran, salves empero totes convinences o empreniments que ell hagues empreses ab ells, com a ell se acordaren, e ell ab ells. E per les raons desus dites fon fet aquest capitol.

Capitol clxxxviii. De palanques, vasos o arguens presos, o logats.

Senyor[1] de nau o de leny qui pendra o logara palanques, o vasos, o arguens, a ops de sa nau o de son leny a traure o a varar; si los palanques o los vasos se trencaran, e si ell los haura logats, no es tengut de esmena a fer, sino tan solament le loguer que ab ell haura empres, qui l's loga al senyor de la nau o del

[1] *Senyor*] Esp. 124, chapter cxcv. commences here with the Rubric "Senyor de nau o de leyn qui noliejara o pendra palanques, o vases."

managing owner of a ship or vessel shall be arrested or detained by the local authorities or by lawless persons in any place, if that place where he shall be detained is a place where he can discharge the mariners, whether the said mariners go for the voyage or have agreed to sail by the month, the managing owner of the ship ought to discharge them, and he is not bound to pay them anything for all the time, whilst he has been detained there by that impediment which has been raised against him, because it is through no fault of his own that he has remained there, and that he has not gone on his way to make profit, [which he would have done], if it had not been forbidden to him. Still further, as the managing owner of the ship has lost enough, seeing he has lost the provisions and has worn his ship or vessel. But nevertheless, if the managing owner of the ship or vessel shall be detained in any place from an embargo on the part of the local authorities or of lawless men, if he is in a place where he can discharge the said mariners and he has not given them their discharge, on the contrary he has kept and detained them with him, he is bound to pay them in full as much as they have agreed upon. Wherefore ? Because if he had wished, he might and could have given them their discharge. And since he did not wish to do so, but wished to detain and keep them with him, it is reasonable that he ought to pay them as much as they agreed upon, saving however all the contracts and undertakings which he has entered into with them when they agreed with him and he with them. And for the reasons above said this chapter has been made.

Chapter clxxxviii. Of levers, rollers, or capstans taken or hired.

A managing owner of a ship or vessel who shall take or hire levers or rollers or capstans for the use of his ship or vessel to haul her up, or to launch her, if the levers or rollers are broken and if he has hired them, he is not bound to make compensation, but only to pay the hire, which he has agreed upon with him who has let them to the managing owner of the ship or

leny. Empero, es tengut de esmenar aquelles palanques o aquelles vasos o aquells arguens qui a servey seu seran rots, a aquell de qui seran, sens tot contrast, si ell los haura presos sens voluntat de aquell de qui son. E trenquense o no s'trenquen, totavia sia pagat lo loguer que empres sera ab ells, menys de tot contrast e de tot lagui.

Capitol clxxxix. De patro qui prometra de sperar als mercaders a dia cert.

Senyor [1] de nau o de leny qui nolieiara la sua nau o lo seu leny a mercaders, e l'senyor de la nau prometra als mercaders de esperar temps sabut la on la nau o leny fara port, ell los es tengut de esperar lo dit temps que ab los mercaders haura empres. E si ell se n'parteix ab la nau o leny abans de aquell temps, que entre lo senyor de la nau e los mercaders sera empres, si los dits mercaders ne sostendran algun dan perco com lo senyor de la nau o del leny se n'sera partit abans del temps que entre ells sera empres, lo senyor de la nau o leny es tengut de esmenar als mercaders tot aquell dan, que per culpa d'ell han sostengut. E si los mercaders no espatxaran lo senyor de la nau o leny al temps que ells hauran empres ab ell, si lo senyor de la nau algun dan pendra o se n'crexera de messio, los mercaders son tenguts de restituir tot lo dan e tota la messio, que per culpa d'ells haura feta. Salvo empero, que si lo senyor de la nau se temia de empatxament de senyoria o de lenys armats de enemichs, o era en loch que l's ne fes levar mal temps, si per aquestes condicions que desus son dites se n'partia ans que l'temps, que entre ells sera empres, fos

[1] *Senyor*] Esp. 124, chapter cxcvi. begins here with the Rubric "Senyor de nau o de leyn qui noliciara la sua nau o l'seu leyn a mercaders." The words "e ell prometra esperar temps sabut" are added in black ink."

vessel. Nevertheless, he is is bound to make compensation for those levers or those rollers or those capstans which have been broken in his service, to him to whom they belong, without any dispute, if he has taken them without the consent of those to whom they belong. And whether they break or not, the hire of them, which shall be agreed upon, shall always be paid without any dispute or delay.[1]

Chapter clxxxix. Of the managing owner, who shall promise to wait for the merchants until a fixed day.

If a managing owner of a ship or vessel shall let his ship or vessel to merchants, and shall promise to the merchants to wait a given time there where the ship or vessel shall be in port, he is bound to wait the said time[2] which he has agreed upon with the merchants. And if he shall depart with the ship or vessel before that time, which has been agreed upon between the master of the ship and the merchants, if the said merchants shall sustain therefrom any loss because the managing owner of the ship or vessel has departed before the time which was agreed upon between them, the managing owner of the ship or vessel is bound to compensate the merchants for all the loss which they have sustained through his fault. And if the merchants shall not despatch the managing owner of the ship or vessel at the time at which they have agreed with him, if the managing owner of the ship suffers any loss or has increased his expenses, the merchants are bound to make good all that loss and all those expenses, which have been incurred through their fault. Saving however, if the managing owner of the ship should be afraid of an impediment of the local authorities or of armed vessels, or she should be in a place where bad weather might come on, if for these reasons he has departed before the time

[1] *delay*] Chapters clxi., clxii., clxiii., and ccxxxii. treat of analogous matters.

[2] *the said time*] The Rolls of Oleron, art. 22, allowed the merchants a grace-term of 15 days, for which, however, they were required to indemnify the shipowner.

passat, lo senyor de lo nau o leny no es tengut als mercaders dels dans que ells ne sostenguessen, perco, car no es culpa sua, ne los mercaders a ell, per aquella meteixa rao.

Capitol exc. De espatxament de nau promes e dia cert.

Mercaders[1] qui noliciaran nau, e prometran al senyor de la nau o leny, que ells lo hauran espatxat a dia cert, e aquella convinenca sera feta ab carta o ab testimonis o sera scrita en lo cartolari de la nau o leny, o n'sera donada palmada entro lo senyor de la nau e los mercaders, o n'sera posada alguna pena, si los dits mercaders a aquell temps no hauran expatxada la nau o leny, si lo senyor de la nau se volra, los pot demanar aquella pena, que entre ells empresa sera posada. E si entre lo senyor de la nau e los mercaders pena alguna posada no sera, lo senyor de la nau pot demanar als mercaders tota la messio que per culpa d'ells haura feta, salvo empero que si l's ho havia tolt o vedat empatxament de Deu o de mar, e que per culpa d'ells no fos romas, ells no son tenguts de pagar al senyor de la nau aquella pena que desus es dita, e que entro ells sera stada empresa, ne encara messio que l'senyor de la nau no hagues feta en aquella meteixa maniera. Si donchs a aquell temps que sera empres entre lo dit senyor de la nau e los mercaders, vendra empatxament de senyoria, que ells no gosen carregar ne anar en algun loch, o encara mes que no gosassen res traure de la terra, los mercaders no son tenguts de res a donar al senyor de la nau pus que no es lur culpa. Mas empero, si ultra lo dit temps que l's mercaders hauran empres ab lo senyor de la nau, vendra impediment de senyoria, e

[1] *Mercaders*] Esp. 124, chapter excvii. here begins with the Rubric "Mercaders qui noliejaran nau o leyn, e prometran al senyor de la nau."

agreed upon between them has passed, the managing owner of the ship or vessel is not liable to the merchants for the losses which they may have sustained, because it is not his fault, nor are the merchants liable to him for the same reason.

Chapter exc. Of the despatch of a vessel promised for a certain day.

If merchants freight a ship and promise to the managing owner of the ship or vessel that they will despatch her by a certain day, and the contract has been made in writing or before witnesses, or has been written in the register book of the ship or vessel, and the managing owner of the ship and the merchants have shaken hands, and a penalty has been fixed, if the said merchants have not despatched the ship or vessel by that time, if the master of the ship wishes it, he may demand from them that penalty which shall have been fixed by agreement between them. And if no penalty has been fixed between the managing owner of the ship and the merchants, the managing owner of the ship may demand from the merchants all the expenses which he has incurred from their fault, saving always, if an impediment of God or of the sea has prevented them, and he has remained through no fault of theirs, they are not bound to pay the managing owner of the ship the penalty above said, and which has been agreed upon between them, nor indeed the expenses which the managing owner of the ship has incurred in the same matter. If then at the time which has been agreed upon between the said managing owner of the ship and the merchants an impediment of the local authorities supervenes, so that they dare not load nor go to any place, or still more they dare not embark anything from the land, the merchants are not bound to give any thing to the managing owner of the ship, since it is not their fault. But nevertheless, if the impediment of the local authorities supervenes after the said time, which the merchants agreed to with the managing owner of the ship, and the merchants through their own fault

los mercaders per lur culpa no haguessen spatxat lo senyor de la nau, los mercaders son tenguts de pagar la pena que entre ells es empresa, e posada sera. E si entre ells pena alguna mesa ne posada no sera, los mercaders son tenguts de retre e donar tota la messio que l'senyor de la nau haura sostengut e sostendra; salvo empero que aquell dan e aquell interes deu esser mes en mesura e en vista, e en coneguda des dos bons homens, qui be e diligentment sien e sapien de la art de la mar. E aquells dos bons homens deven en tal guisa temprar aquell dan e aquell interes, que l'senyor de la nau haura sostengut per culpa dels mercaders, que lo senyor de la nau ne los mercaders no y sien malcaents, e en guisa e en manera que l'senyor de la nau e los mercaders romanguen en amistat e en benevolenca. E si lo senyor de la nau guanyara res de nolit, ell es tengut de donar als mariners per lur loguer, en aquella forma que ell guanyara de nolit. Empero, qualsevulla pati que l'senyor de la nau fara ab los mercaders, en aquell pati meteix deven esser los mariners. E en aquella meteixa manera, que desus es dita, es tengut e obligat lo senyor de la nau o leny als mercaders, que l's prometra de esser espatxat a dia cert, e per culpa d'ell romandra. E si los mariners van a loguer, lo senyor de la nau no l's es

have not despatched the managing owner of the ship, the merchants are bound to pay the penalty which has been agreed upon and fixed between them. And if no penalty has been settled or fixed between them, the merchants are bound to make good and pay all the expenses, which the managing owner of the ship has incurred through their fault; and further, all the loss and all the interest which the managing owner may have had or shall have to support; saving always that the loss and interest shall be measured and inspected and adjudged by two respectable men,[1] who well and diligently know and are versed in the business of the navigation. And those two respectable men ought to temper that loss and that interest, which the managing owner of the ship shall have sustained from the fault of those merchants, in such a manner that the managing owner of the ship and the merchants shall not be discontented, and in such form and manner that the managing owner of the ship and the merchants shall remain in friendship and in good intelligence. And if the managing owner of the ship shall earn some freight, he is bound to pay to the mariners on account of their wages in proportion as he shall have earned freight. Nevertheless, whatever compact the managing owner of the ship shall make with the merchants, by the same compact the mariners[2] ought to abide. And in the very same manner as above stated the managing owner of the ship or vessel is bound and liable to the merchants, when he has promised to be dispatched on a certain day, and through his fault he remains. And if the mariners go for hire, the managing owner of the ship

[1] *respectable men*] The phrase bons homens is distinguished from Promens de la Mar, "Prudhommes "of the Sea," which is used in chapter clvii.; but it may be here intended that they should be members of the Corporation of Navigators. There was, in fact, such a corporation at Barcelona corresponding in many of its functions to the Corporation of the Trinity House in London.

[2] *the mariners*] The same principle is laid down in very similar words in chap. cxlvii.

tengut de res a donar, perco, car lo senyor de la nau no haura empres ab ells quant sera espatxat ne quant no. Mas, si los mariners seran acordats a mesos, lo senyor de la nau los es tengut tot en axi com entre ell e los mariners sera empres lo jorn que ell los acorda. E los nostres antecessors, qui primerament comencaran anar per lo mon, veeren e conegueren que aquell dan, que entre los mercaders et los senyors de les naus poria esser, que sia mes en coneguda e en egualtat per los bons homens de la mar, perco que negu no sab ne pot saber ja aquell destrich o aquell empediment, si sera per son prou o per son dan; perque es bona la cominalesa e la egualtat e lo temprament dels bons homens. E fon fet perco aquest capitol: car si mercaders no eren, no cal ara a algu fer nau ne leny; ne si les naus no fossen, no seria tan bon hom mercader com es: perque los mercaders deven soffrir e passar ab los senyors de les naus, e los senyors de les naus son encara mes tenguts de soffrir e de sostenir als mercaders, mes que los mercaders no son als senyors de les naus, per moltes raons, les quals no cal ara a nos dir ne recapitular, perco, car quascu es tan cert e tan savi, que les veu e les coneix, perque ara no les nos cal recapitular. E si, per ventura, algu n'y ha, que sia tan negligent que no la sapia, deman les a aquells qui li sera semblant, que les deian saber mils que ell.

Capitol cxci. De nau qui stibara de gerram.

Nau[1] o leny qui stibara de gerram, los mercaders son tenguts de donar homens qui stiben la nau o leny, ab que sien en loch on ne puguen trobar per diners.

[1] *Nau*] Esp. 124, chapter cxcviii. here begins with the Rubric "Nau " ho leyn qui stibara de gerram."

is not bound to give them any thing, because he has not agreed with them when he shall be dispatched. But if the mariners have agreed by the month, the managing owner is liable to them for as much as has been agreed upon between him and the mariners from the day upon which he engaged them. And our predecessors who first began to voyage about the world saw and adjudged that the loss, which might occur between merchants and managing owners of vessels, should be submitted to the cognisance and equity of the prudhommes [1] of the sea, because no person knows or can know respecting such difficulties and impediments whether they will be for his profit or his loss; wherefore the arbitration and equity and moderation of the prudhommes is valuable. And this chapter was made, for if there were no merchants it would be not worth while for any one to build ships, and if there were no ships, there would not be so many good merchants; wherefore the merchants ought to suffer and put up with the managing owners of ships, and the managing owners of ships ought still more to suffer and put up with the merchants, to a greater degree than the merchants ought to do with the managing owners of ships, for many reasons which it would not be worth while for us to say and recapitulate, for every one is sufficiently experienced and wise to see and know them, wherefore it is not worth while for us to recapitulate them. And if by chance there be anyone who is so negligent that he does not know them, he should inquire of those who shall appear to him to be bound to know more than he does.

Chapter exci. Of a ship that shall load with earthen jars.

If a ship or vessel loads with earthen jars, the merchants are bound to provide men who shall store the ship or vessel, provided it be in a port where they can

[1] *the prudhommes*] The phrase "los bons homens de la mar," if it is the correct reading, may here mean "the prudhommes of the sea." The Italian translation has "i buoni "del mare." Casaregis has "li "buoni homini del mare."

E si son en loch on no n'puguen trobar per diners, los mercaders se deven avenir ab los mariners, e l's mariners deven ho fer. E los mercaders deven los pagar a coneguda del notxer; e lo notxer deu fer en guisa e en manera, que l's mariners sien ben pagats de lur maltret, en tal guisa que l's mercaders no sien malcaents, e aco deu esser posat en fe del notxer; que lo notxer asi es posat com a balanca de tenir veritat e de ferma dretura, axi be als mercaders com al senyor de la nau e als mariners, e a tot hom qui en la nau sia o vage, que no s'deu mes tenir ab los uns que ab los altres; e si ho fa esne perjur, o si provat li sera, ell no seria cregut per nengun temps de sagrament que ell fes. Empero, si lo senyor de la nau prometra o empendra ab los mercaders que fara stibar la nau, los mercaders ne son tenguts de logar stibadors, mas lo senyor de la nau se n'deu avenir ab los mariners, si los mariners se volen, e pagar a ells, axi com desus es dit. Mas, si los mariners volran fer gracia al senyor de la nau, deu los ho regoneixer a coneguda del notxer en guisa que los mariners ne sien pagats.

Capitol excii. Si gerra se trencara en nau.

Si algun[1] senyor de nau o leny haura nolieiada la sua nau o leny a alguns mercaders, e los dits mercaders carregaran aquella nau o leny que ells nolieiada hauran, si ells carregaran de gerram, e los dits mercaders hauran lurs stibadors, qui per ells stiben aquella nau o leny, que ells hauran nolieiat, sia que aquells stibadors qui

[1] *Si algun*] Esp. 124, chapter cxcix. here begins with the Rubric Si alcun senyor de nau o de leyn " aura nolieiada la sua nau ol's eu " leyn."

find them by money. And if it be in a place where they cannot find them by money, the merchants ought to make a contract with the mariners, and the mariners[1] ought to do the work. And the merchants ought to pay them according to the award of the mate, and the mate ought to make his award in such form and manner that the mariners should be well paid for their labour, and in such manner that the merchants shall not be discontented, and this must rest upon the good faith of the mate; for the mate is placed in the ship like a balance to maintain truth and secure justice as well for the merchants as for the managing owner of the ship and for the mariners, and for every person who shall be or shall sail in the ship, for he ought not to incline himself more towards one than towards another; and if he does so he is perjured, and if it can be proved he shall never more be believed upon his oath. Nevertheless, if the managing owner of the ship shall promise or shall agree with the merchants that he will have the ship stowed, the merchants are not bound to hire stowers, but the managing owner of the ship ought to agree with the mariners, if the mariners are willing, and to pay them, as above said. But if the mariners will do a favour to the managing owner of the ship, he ought to recognise their services according to the award of the mate in such manner that they shall be paid.

Chapter excii. If earthen jars are cracked in the ship.

If any managing owner of a ship or vessel shall have let his ship or vessel to any merchants, and the said merchants load that ship or vessel which they have freighted, if they load it with earthen jars and the said merchants have their own stowers, who stow for them the ship or vessel which they have freighted, whether it be that those stowers who stow for them and whom

[1] *the mariners*] This subject has been discussed in chapters xxviii. and xxix.

per ells stibaran, e ells hi hauran mesos per lo lur gerram a stibar, sia que aquells stibadors ho stiben be o no, si gerram algu o gerres s'y trencaran o s'y rompran o s'y consentiran, lo senyor de la nau o del leny no sia tengut de alguna esmena a fer, pusque per culpa d'ell no sera fet. Mas, los mercaders de qui aquell gerram sera, sien tenguts de donar a aquell senyor d'aquella nau o leny tot aquell nolit que promes li hauran de donar per quascuna gerra; empero, es axi a entendre, que l'senyor de la nau o leny puga retre o mostrar los tests, en testimoni de aquella gerra o gerres, que rotes o trencades seran, sens tot contrast. Empero, si lo senyor de la nau o leny fara stibar aquell gerram, e los stibadors que y metra, stibaran be e sufficientment, e sens culpa del stibar, que ells hauran fet, gerra o gerres s'y rompran, lo senyor de la nau no es tengut de fer esmena a aquell mercader de qui seran, sino tant solament que ne n'deu haver nolit. E per qual rao no li es tengut que li esmen lo dan que l'mercader ne sostendra? Per aquesta rao, car algu no deu creure, no encara en ver poria metre, que algun senyor de nau o leny fos pagat ne sia, que algun mercader perda ne faca son dan en la sua nau o leny per culpa d'ell, ne per res que ell fer hi puga. Empero, si los mercaders provar o mostrar poran que per culpa del senyor de la nau o dels stibadors, que ell li haura mesos, s'y rompran gerra o gerres, ell es tengut de esmena fer a aquells mercaders de qui seran. Per que senyor de nau o leny no deu stibar, ne fer stibar sa nau o leny de gerram, si los mercaders

they have put on board to stow their earthen jars, stow well or not, if any jar or jars are cracked or broken or smashed together, the managing owner of the ship or vessel is not bound to make any compensation to them, since it has not happened from his fault. But the merchants, to whom those jars belong, are bound to pay to the managing owner of that ship or vessel all that freight[1] which he has promised to pay for each jar, nevertheless it is to be understood that the managing owner of the ship or vessel may retain and show the pieces in evidence of the jar or jars which may be broken or cracked without any dispute. Nevertheless, if the managing owner of the ship or vessel shall cause the jars to be stowed, and the stowers, whom he shall put on board, shall stow well and sufficiently, and without fault of the stowage which they have executed a jar or jars are broken, the managing owner of the ship or vessel is not bound to make any compensation to the merchant to whom it or they belong, excepting so far as he shall not be entitled to freight. And for what reason is he not bound to indemnify the merchant for the loss which he has sustained? For this reason, for no one ought to believe nor can he possibly prove it to be true, that any managing owner of a ship or vessel would be paid in order that any merchant should lose or suffer loss on board his ship or vessel through his fault, or through any thing which he could do. Nevertheless, if the merchants can prove and show that through the fault of the managing owner of the ship, and of the stowers whom he has put on board, the jar or jars have been broken, he is bound to indemnify the merchants to whom they shall belong. Wherefore no managing owner of a ship or vessel should cause his

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[1] *all that freight*] The same principle is applied to a cargo of wine in chapter clx. It was also affirmed by the Roman law. Dig. lib. xiv. tit. 11. fr. 10.

o hom per ells no y eren presents al stibar, perco que dan no li n'puga tornar. Empero, si al stibar del gerram haura mercaders o algun hom per els qui veia al stibar, si gerra o gerres s'y rompran, lo senyor de la nau no es tengut de alguna esmena a fer, ne encara los mercaders no li deven, ne li poden lo nolit tolre per neguna rao, pusque ells o hom per ells hi seran stats al stibar. Empero, si al carregar o stibar se trencara gerra alguna, los mercaders no sien tenguts de donarne nolit al senyor de la nau; mas empero, si s'trencaran al descarregar, los dits mercaders son tenguts de donarne nolit al senyor de la nau o leny. E perco, que desus es dit, fon fet aquest capitol.

Capitol cxciii. Si mariners se n'menaran la nau sens voluntat del senyor.

Senyor[1] de nau o leny qui haura nolieiada la sua nau per anar descarregar en algun loch, e com lo dit senyor de la nau sera en lo dit loch on ell deura descarregar, ell deu descarregar sa nau. E quant la nau sera descarregada, ell se deu espatxar com mils pusca, en cercar lo profit de la nau, perco, que ell pusca donar guany a si meteix e a sos personers; e los mariners deven lo sperar, que no l'deven congoxar, ell pagant a ells aquell loguer que ab ells haura empres, tro fins que ell sia espatxat. E si los mariners per desalt que haguessen del senyor de la nau, se levaran d'aquell loch on hauran descarregat, e se n'menaran la nau o leny menys de voluntat o de sabuda del senyor, qui en terra sera; los mariners qui aco cometran o faran, no deven haver dret en haver ne en persona ne en res que ells haien; e lo senyor de la nau pot los metre en ferres e metre en poder de la senyoria e fer

[1] *Senyor*] Esp. 124, chapter cc. commences here with the Rubric "Senyor de nau o de leyn, qui aura noliejada la sua nau o l'seu leyn."

ship to be stowed with earthen jars, if the merchants or their agent is not present at the stowage, in order that no loss may accrue to him. Nevertheless, if at the stowing of the earthen jars he shall have the merchants or their agent to inspect the stowage, if a jar or jars are broken, the managing owner of the ship is not bound to make any compensation, and the merchants ought not and cannot withhold any freight for any reason, since they or their agent was present at the stowage. Nevertheless, if at the loading or stowage any jar was broken, the merchants are not bound to pay freight for it to the managing owner of the ship; but nevertheless, if they are broken at the unloading, the said merchants are bound to pay freight for them to the owner of the ship or vessel. And for the reason above said this chapter was made.

Chapter exciii. If the mariners carry off the vessel without the consent of the managing owner.

If a managing owner of a ship or vessel has let his ship for freight to go to discharge in any place, when he shall be at that place where he ought to discharge, he ought to discharge his ship. And when the ship shall be discharged, he ought to make as much dispatch as he can in search of profit with his said ship, in order that he may be able to procure gain for himself and his part-owners; and the mariners ought to await him, and ought not to hurry him, provided he pays them the wages, which he has agreed upon with them until he shall be dispatched. And if the mariners from spite which they have for the managing owner of the ship, go away from the place where they have discharged the cargo, and carry away with them the ship or vessel, without the consent and knowledge of the managing owner, who is on shore; the mariners who shall so do and commit themselves ought not to have any right in property or in person or in any thing which they possess, and the managing owner of the ship may put them in irons and place them in the custody of the local authorities and make a demand against them, just as

demanda contra ells, tot en axi com aquells qui desconeixen lur senyor e l'desposseexen de sa senyoria: axi es a entendre que la nau sia en terra de amichs e en loch menys de perill. Encara, son tenguts de mes los mariners qui aco faran o consentiran, de retre e de esmenar tot lo dan e tot lo greuge e tot lo interes que l'senyor de la nau haura sostengut; e lo senyor de la nau sia cregut per sa simpla e plana paraula. E los mariners, qui aco haurian fet o consentit, deven tant star en la preso tro fins que haien satisfet al senyor de la nau, o que s'sien avenguts ab ell, a la sua voluntat. E fon fet perco aquest capitol, que mariners no se n'deven menar nau ne leny, si be li senyor de la nau los fara algun tort, mas deven se n'anar a la senyoria on seran e clamarse del tort, que a ells sera semblant que ells los faca; que no seria ben fet, que qualque hora que fos semblant als mariners que l'senyor de la nau los faes algun tort, e l's tengues en algun loch ultra lur voluntat, que ells se n'poguessen la nau o leny menar en que ells serien. E per aquesta rao es hi posada la pena desusdita.

Capitol cxciv. Del comprar de les vitualles e coses necessaries a la nau.

Senyor[1] de nau o leny qui haura nolieiada la sua nau o lo seu leny per anar a guanyar en algunes parts, ell deu fer comprar al scriva vianda e companatge e totes les altres coses que sien necessaries a la nau o leny; salvo empero, qui si la nau haura mester exarcia, que la deu comprar lo senyor de la nau ab lo dit scriva. E quant haura comprat e fet compliment

[1] *Senyor*] Esp. 124, chapter cci. begins here with the Rubric "Senyor de nau o de leyn qui aura noliejada la sua nau o l'seu leyn." Some words are added in black which are not legible, but which differ from the additional words inserted in the table of contents, viz., "e aura mester diners per espatxar la nau e los personers no volran mestrer, que pot manlevar."

against persons who renounce their lord and dispossess him of his authority. It is also to be understood that the vessel is in the land of friends and in a place free of peril. Further, the mariners who have done this or consented to do it are bound in addition to make good and compensate all the loss and all the prejudice and all the interest which the managing owner of the ship shall have sustained, and the managing owner of the ship shall be believed upon his simple and plain word. And the mariners, who have done this and consented to it, ought to remain in prison until they have satisfied the managing owner of the ship, or until they shall have made an arrangement with him according to his pleasure. And this chapter was made, for the mariners ought not to carry away the ship or vessel, even if the managing owner of the ship shall do them any wrong, but they ought to go before the local authorities where they are, and complain of the wrong, which it appears to them that the managing owner has done to them, for it would not be well done, if at any hour that it appeared to the mariners that the managing owner of the vessel has done them some wrong, and that he keeps them in any place against their will, they should carry away the ship or vessel in which they are. And for this reason the penalty above said has been laid down.

Chapter cxciv. Of the purchase of provisions and things necessary for the ship.

If the managing owner of a ship or vessel has let his ship or his vessel on freight to go for gain to other countries, he ought to purchase through his ship's clerk meat and a full supply of accompaniments[1] and other things which may be necessary for the ship or vessel; saving, however, if the ship has need of apparel, the managing owner of the ship or vessel in concert with the chief clerk ought to buy it. And when he has bought

[1] *accompaniments*] The Catalan word "compagnatge" and other cognate words have been discussed in chapters xxxii., lxviii., and c.

de companatge et de totes coses que sien a necessari de la nau, e l'senyor haura comprada aquella exarcia que necessari sera de la nau; empero, si lo senyor de la nau sera en loch que y sien personers, ell los deu demanar de aquella exarcia, ans que la compre. E si los personers no u volen, e lo senyor de la nau coneixera que aquella exarcia sia ops e necessaria a la nau, ell la pot ben comprar, que no deu star per los personers, perco, car personers romanen per ventura sals en terra, e ab que ells haguessen diners, anas que s'volgues a ventura de la mar. E per aquesta rao los personers no y deven contrastar a aquella exarcia que no s'compre, pus que l'senyor de la nau veia que a la nau sia gran necessari, que si la nau era menys de aquella exarcia, ella navegaria a gran condicio, e lo senyor de la nau poria esser repres dels mercaders; e per aquesta rao no y poden res contrastar. E si lo senyor de la nau tendra algun comu de la nau, ell deu pagar la companya e la exarcia que ell haura comprada; e si lo senyor de la nau no te algun comu de la nau, ell deu comptar e sumar ab l'escriva tot quant costa la companya, et tot co que l'escriva haura comprat, e aco que costara la exarcia, que l'senyor de la nau haura comprada. E com lo senyor de la nau e l'escriva ho auran comptat e sumat, l'escriva deu anar a quascun personer e dir, que l's deian pagar tot co que a quascu vendra per la sua part; e si l'per-

and has made up his complement of accompaniments and of all things which may be necessary for the ship or vessel, and the managing owner has purchased the apparel which may be requisite for the ship; nevertheless, if the managing owner of the ship shall be in a place where there are part-owners, he ought to demand from them the apparel before he buys any. And if the part-owners will not provide it, and the managing owner of the ship shall judge that such apparel will be useful and necessary for the ship, he may properly buy it, without regard to the part-owners, because part-owners remain probably safe on shore, and, provided they have money, he may go who chooses to confront the chances of the sea. And for this reason the part-owners ought not to object to the purchase of such apparel, since the managing owner sees that it is greatly necessary for the ship, for if the ship were without such apparel, it would sail at great risk, and the managing owner might be reproved by the merchants; and for this reason they cannot in any way object. And if the managing owner of the ship has any common funds of the ship, he ought to pay for the accompaniments [1] and for the apparel which he has purchased, and if the managing owner has not any common funds of the ship, he ought to reckon and sum up with the ship's clerk all that the accompaniments have cost, and all that which the ship's clerk has bought, and also that which the apparel has cost, which the managing owner of the ship has purchased. And when the managing owner and the ship's clerk have reckoned and summed up, the ship's clerk ought to go to each part-owner and say that he ought to pay all that which devolves upon each for his share, and if the part-

[1] *accompaniments*] The same word "companya" is used in this sense in chapter lxviii. M. Pardessus translates the word "companya" here by the word "matelots," which the Editor ventures to think is an oversight on his part, as the context clearly requires another interpretation.

soners ne volien oir compte, l'escriva los n'es tengut. E com los personers hauran oit compte del scriva, ells son tenguts de donar al scriva tot co que a quascu vendra per la part que haura en la nau. E si haura algun personer, qui no volra pagar co que a ell ne vendra per la sua part e contrastara, e lo senyor de la nau ho haura a manlevar, perco car aquell personer no haura volgut pagar, de la part que aquell personer haura en la nau se deu pagar aquell deute, e tot lo guany que l'senyor de la nau promes a aquell qui prestat lo y haura, si tota aquella part se n'sabia consumar que aquell personer haura en la nau; perco, car per culpa d'ell se sera feta aquella manleuta. E si venia cas que la nau se perdes, e que la manleuta no fos pagada, los bens d'aquell personer se haurien a parar a aquell deute a pagar, per co, car ab sabuda e per culpa d'ell se seria feta aquella dita manleuta. Mas, empero, si lo senyor de la nau sera en loch on no haura personers, ne lo senyor de la nau tendra comu de la nau, e ell fara manleutar per les raons que desus son dites; tot lo cominal de la nau ho ha a pagar, que personer algu no y pot contrastar. Empero, si abans que aquella manleuta que desus es dita sia pagada, si la nau se perdra, personer algu no n's tengut de res a retre a aquell qui prestat hi haura, pus que la nau sera rota e perduda. Guart se aquell ia com prestara, ne com no, que l'personer assats hi pert, pus que la sua part hi pert. E axi per la rao desusdita lo prestador no pot res demanar a aquells qui havien part en la nau; per que ell se guart com prestara la sua moneda, ne com no,

owners are desirous to hear the account, the ship's clerk is bound to read it to them. And when the part-owners have heard the account of the ship's clerk, they are bound to pay to the ship's clerk all that which devolves upon each for the share which he has in the ship. And if there be any part-owner who will not pay that which devolves upon him for his share, and shall object, and the managing owner of the ship shall have to borrow because that part-owner has not been willing to pay, that debt ought to be paid with the share which that person has in the ship, and with all the gain which the managing owner of the ship has promised to him who has lent the money, even if all the share shall be consumed which that part-owner had in the ship, for this reason, because the loan has been made through his fault. And if the case arises that the vessel is lost, and that the loan is not paid, the effects of that partner shall have to provide for the payment of the debt, for this reason, because that loan was made with his knowledge and through his fault. But nevertheless, if the managing owner of the ship shall be in a place where there are no part-owners, and the managing owner of the ship has no common funds of the ship, and he shall raise a loan for the reasons above said, all the partners of the ship have to pay it, for no part-owner may dispute it. Nevertheless, if before that loan above mentioned be paid the ship shall be lost, no part-owner is bound to render any thing back to him who lent the money,[1] since the ship has been broken up and lost. Let him beware how he lends or not, for the part-owners have lost enough since each has lost his share. And accordingly for the reason above said, the lender cannots demand any thing from those who have a share in the ship; wherefore he should beware when he shall lend his money and when not, for

[1] *who lent the money*] The elements of the modern contract of bottomry may be traced in this rule.

que com la nau sera rota, los personers no son tenguts de res a metre en aquell nau. Empero, si la nau sera en algun loch, e aquell prestador, se volra pagar del prestech que ell fet haura; si lo senyor de la nau haura diners seus o d'altre, o ell tendra algun comu de la nau, ell es tengut de pagar aquell prestador, e encontinent tornar la nau als personers, e comptar ab ells del guany e de la perdua que ell fet haura; e si guanya, ell es tengut de donar part d'aquell guany a quascun personer, segons que haura part, e deu esser partit lo guany per lo cominal dels personers. E si guany no y haura e y haura perdua, quascun personer es tengut de retre e de donar al senyor de la nau, tant com a ell ne vendra per la sua part; que rao es que qui part vol haver del guany, que part deia haver de la perdua. E si lo senyor de la nau no haura diners de si, ne d'altre, ne la nau no haura guanyat, ne ell no tendra algun comu de la nau, e l'prestador fara vendre la nau, e com la nau sera venuda e l'prestador sera pagat, si de la venda de la nau sobrara alguna cosa, lo senyor de la nau es tengut de venir en aquell loch on seran los personers, e de donar lur part de tot ce que de la venda de la nau sobrara. E si lo senyor de la nau haura haguda a vendre la nau, per les raons que desus son dites, personer algu no li pot fer demanda; si donchs los personers no li poden provar lo contrari, que aquella manleuta, per la qual la nau sera venuda, que ell la hagues feta per son joch, o per altres barates que ell menas o faes. E si los personers aco provar li poran, lo senyor de la nau es

when the ship is broken up the part-owners are not bound to contribute any thing to the ship. Nevertheless, if the ship shall be in any place, and the lender wishes to be paid the loan which he has made, if the managing owner of the ship shall have money of his own or of others, and shall hold any common funds of the ship, he is bound to pay that lender, and immediately to return to the part-owners and account to them for the gain and the loss which he has made, and if he has gained he is bound to give part of the gain to each part-owner, according to the share which he has, and the gain ought to be divided amongst the body of part-owners. And if there be no gain and there is loss, each part-owner is bound to render and pay to the managing owner of the ship so much as shall devolve to his share, for it is reasonable that he who would share the gain should share the loss. And if the managing owner of the ship has not funds of his own, nor of others, and the ship has made no profit, and he has no common funds of the ship, and the lender shall cause the ship to be sold, and when the ship shall be sold and the lender shall be paid, if there shall remain any surplus from the sale, the managing owner is bound to come to the place where the part-owners shall be, and ought to pay to each his part of all that surplus which exists from the sale. And if the managing owner of the ship has had to sell the ship[1] for the reasons above stated, no part-owner can make a claim against him; unless the part-owners can prove the contrary, that the loan, on account of which the ship was sold, was made by him to obtain funds for gambling or for other debauchery in which he has indulged himself. And if the part-owners can prove this, the managing owner of the ship is bound

[1] *to sell the ship*] The power of the managing owner to sell the ship without the consent of the part-owners is discussed in chapters cvi. and cvii., and likewise in chapter ccxi.

tengut de retre e de donar als personers totes les parts que en la nau havien, o lo preu d'aquelles. E si lo senyor de la nau no ha de que pagar, ell deu esser pres e mes en ferres e star tant, tro que ell sia avengut ab los personers o que l's haia satisfets del dan que fet los haura. E si com lo senyor de la nau haura venuda la nau, axi com desus es dit, si ell ab allo que de la nau li sera sobrat no tornara a retre compte als personers, a donar la part que a ells pertanyera de tot co que de la nau li sera sobrat, e ell se n'ira en altres parts, si aco que de la venda de la nau li sera sobrat se perdra, ell n'es tengut de esmena a fer als personers, axi com desus es dit. E si ell se n'ira en altres parts ab allo que de la nau li sera romas, e ell ne guanyara, tot lo guany que ell fet ne haura es tengut de donar als personers, a quascu segons que la donchs havien part en la nau, menys de tot frau e contrast.

Capitol excv. Com lo patro deu dar compte als personers quascun viatge.

Tot senyor[1] de nau o leny es tengut de retre compte a sos personers, quascun viatge que ell fara. E si lo senyor de la nau no retra compte a sos personers de quascun viatge que ell fara, si la nau o leny se perdra o pendra algun damnatge, lo senyor de la nau es tengut de retre e de donar tot lo guany que ell fet haura als personers; que per rao de la nau que perduda haura o del leny lo senyor de la nau no s'deu excusar ne pot, que no haia a retre e a donar tot lo guany, que ell ab aquella nau o leny haura fet. E si lo senyor de la nau o leny no haura de que u pusca retre, si ell es tengut, ell deu esser pres e mes en ferres, tot en axi com en lo capitol desusdit se conte. E fon fet

[1] *Tot senyor*] Esp. 124, chapter ccii. here begins with the Rubric "Tots senyors de naus o de leyns "son tenguts de retra compta als "personers."

to restore and pay to the part-owners all the shares which they had in the ship or the price of them. And if the managing owner of the ship has not wherewithal to pay, he ought to be seized and put in irons and remain so until he shall have arranged with the part-owners, or until he has satisfied them for the losses which he has caused them. And if, when the managing owner of the ship shall have sold the ship, as above said, he does not return with the surplus that remains of her to render an account to the part-owners, and to give to them the share which belongs to them of the surplus which remains from the ship, and he shall go away to other parts, if that surplus which remains from the sale of the ship shall be lost, he is bound to make compensation to the part-owners as above said. And if he shall go away to other parts, with that which remains from the ship, and he shall make profit with it, all the profit which he shall make he shall be bound to pay over to the part-owners, to each according to the share which he had in the ship, free from all fraud and dispute.

Chapter excv. How the managing owner ought to give an account to the part-owners on every voyage.

Every owner of a ship or vessel is bound to render an account to the part-owners every voyage which he shall make. And if the managing owner of the ship shall not render to the part-owners an account of every voyage which he shall make, if the ship or vessel shall be lost or shall suffer any damage, the managing owner of the ship is bound to render and to pay over all the gain which he shall have made to the part-owners. For by reason of the ship or vessel having been lost the managing owner of the ship neither can nor ought to excuse himself, so as not to have to render and pay all the gain which he shall have made with that ship or vessel. And if the managing owner of the ship or vessel shall not have wherewithal to pay, if he is bound to do so, he ought to be seized and put into irons, precisely as has been stated in the previous chapter. And this chapter was made

perco aquest capitol, car molt senyor de nau o leny repren e triga que no vol comptar ab sos personers, e com ve que ell haura perduda sa nau o leny, e ell dira que tot s'y es perdut; o sia que s'y perda o que no s'y perdra, lo senyor de la nau o leny n'es tengut axi com desus es dit. Per que tot senyor de la nau o leny devria e deu comptar quascun viatge que fara ob sos personers del guany o de la perdua que fet haura, perco que la pena que desus es dita no li pogues venir desus. Encara, es de mes tengut lo senyor de la nau als personers, que si lo senyor de la nau guanyara ab aquell comu que dels personers haura o tendra, ell los es tengut de donar lur part de tot lo guany que fet ne haura. E si ell per ventura hi haura perdut, personer algu no li es tengut de perdua que ell feta n'haia, per co com ell tendra aquell comu malgrat dels personers desusdits.

Capitol cxcvi. Com patro deu dar compte e si s'mor sens comptar.

Si algun[1] senyor de nau o leny navegara un viatge o molts, si ell navegara o tornara alguna veguda o moltes en aquell loch on seran tots los sens personers o la major partida, ell los es tengut de retre compte quascun viatge que ell fera; e si ell no li fa, ell es tengut tot en axi com en lo capitol desusdit se conte. Empero, si lo senyor de la nau o leny navegara axi com desus es dit, e ell cessara que no retra compte als personers, ne encara no l's dara res d'aco que guanyara, los dits personers lo n'deven requerir. E si, per ventura, ell simplament e sens malicia fer no u volra, los sobredits personers lo n'poder forcar. E si los dits personers lo n'requeren o no, e forca alguna, si ell fer no u volra, ells no li metran; si al senyor de la nau o del leny vendra cas de ventura que s'morra, si los dits personers la donchs apres la mort sua ells

[1] *Si algun*] Esp. 124, chapter cciii. here begins with the Rubric "Si algun senyor de nau o de leyn navegara un viatge o molts."

for this reason, for many a managing owner of a ship or vessel holds back and delays accounting to the part-owners, and when he sees that he has lost his ship or vessel, he will say that everything is lost; and whether it be lost or not, the managing owner of the ship or vessel is responsible precisely as above stated. Wherefore every managing owner of a ship or vessel ought to account every voyage which he shall make with the part-owners as to the profit or loss which he shall have made, in order that the above-mentioned penalty may not fall upon him. Further, the managing owner of the ship is responsible to the part-owners, that if the managing owner of the ship shall gain with the common fund which he had or holds of the part-owners, he is bound to give to them their share of the entire gain which he may have made. And if by chance he shall lose, no part-owner is liable for the loss which he shall have incurred, since he has retained that common fund in spite of the part-owners above mentioned.

Chapter excvi. How the managing owner ought to give an account, and if he dies without accounting.

If any managing owner of a ship or vessel shall navigate one or many voyages, and if he shall navigate or return once or many times to the place where all or the greater part of the part-owners are, he is bound to render them an account every voyage which he shall make, and if he does not so do, he is responsible precisely as has been above stated. Nevertheless, if the managing owner of the ship or vessel shall navigate as above stated, and he shall omit to render an account to the part-owners, nor shall give them any part of that which he shall gain, the said part-owners ought to require it. And if by chance he shall simply and without malice decline to do so, the above-mentioned part-owners may force him to do so. And if the said part-owners require it or not, and they will not use any force, if he declines to do so, and if a case of misfortune happen to the managing owner of the ship or vessel, and he dies, if thereupon the said part-owners after his death shall demand from the

demanaran als hereus d'aquell qui mort sera, o als detenidors dels seus bens, compte e part del guany, que aquell qui mort sera havia fet ab aquella nau o leny; los dits hereus o los detenidors d'aquells bens seus no l's son tenguts de retre compte, ne de res a donar de guany que aquell hagues fet, si donchs los dits personers provar no u poran, o aquell qui mort sera no u havia jaquit manat en son testament. E si, per ventura, aquell qui mort es, sera mort intestat, los hereus d'aquell, o los detenidors dels seus bens, no son de res als tenguts a aquells sobredits personers, sino tan solament d'aco que en lo cartolari d'aquel qui mort sera se trobara scrit. E si ells trobaran en lo desusdit cartolari scrit algun guany, los dits hereus o detenedors dels bens de aquell qui mort sera, son tenguts de retre a quascun dels dits personers la part que li pertanyera de aquell guany, que ells hauran trobat scrit, si tots los bens d'aquell qui mort sera ne sabien esser venuts. E si, per ventura, en lo cartolari d'aquell qui mort sera algun guany scrit no sera trobat, si algun consumament scrit trobat sera, que la nau o leny hagues a tornar a aquell qui mort sera, o alguns de qui ell o hagues manlevat, per rao de consumament que la nau o leny hagues fet, los dits personers hi son tenguts de pagar lur part. Empero, es axi a entendre que aquell consumament ne fos fet per culpa d'aquell qui mort sera, qui la donchs en temps de la vida sua era senyor d'aquella nau o leny e qui aquell consumament desusdit haura fet. E si lo dit consumament poran provar los dits personers, que per culpa d'aquell qui mort sera, qui la donchs en temps de la vida sua era senyor, fos fet, ells no y son tenguts de res a metre, pus ells en ver metran que per culpa d'aquell, qui mort sera, sia stat fet lo consumament desusdit; altrament los dits personers son tenguts de donar e de pagar a aquell consumament segons que a quascu ne

heirs of him who is deceased, or from the administrators of his effects, an account and their share of the profit which the deceased has made with the ship or vessel, the said heirs or the said administrators of his effects are not bound to render an account nor to pay over any part of the profit which he may have made, unless the said part-owners can prove it, or he who is dead shall have left directions in his testament. And if by chance the deceased has died intestate, his heirs or the administrators of his effects are not liable for anything to those part-owners above mentioned, except only for so much as shall be found written in the register book of the deceased. And if they shall find in the said register book any profit entered, the said heirs or administrators of the effects of the deceased are bound to render to each of the said part-owners the part which shall belong to him of that profit which they shall have found entered, even if all the effects of the said deceased have to be sold. And if by chance in the register book of the deceased no profit is found to be entered, if any expenditure shall be found entered, which the ship or vessel has to repay to the deceased, or the names of any persons from whom he has obtained a loan to meet the expenditure which the ship or vessel has incurred, the said part-owners are liable to pay their part. Nevertheless it is to be understood that such expenditure was not incurred by the fault of him who is deceased, who in his lifetime was the managing owner of the ship or vessel, and who has made the above-mentioned expenditure. And if the part-owners can prove that the said expenditure was incurred by the fault of him who is deceased, and who was in his lifetime the managing owner of the vessel, they are not bound to contribute anything, provided they have ascertained that the expenditure was incurred by the fault of the deceased; otherwise the said part-owners are bound to contribute and pay towards that expenditure in proportion to what belongs to each

pertanyera de la sua part: e es rao que axi com ells prengueren volenters part del guany, si y fos, axi es rao, que paguen part en lo dit consumament: encara, per altra rao, perco com· aquell qui mort sera, e la donchs en temps de la vida sua era senyor d'aquella nau o leny, anava, stava, o navegava entre ells, com ells no n'destrenyien que comptas ab ells, o que l's donas part d'aco que guanyava. E si per ventura, aquell qui mort sera ab intestat, cartolari algu no havia fet ne haura scrit; los sobredits personers no poden demanar als hereus d'aquell qui mort sera alguna cosa, ne los hereus o detenidors dels bens de aquell mort no poden res demanar als sobredits personers de consumament de la nau o leny que hagues fet, pus en lo cartolari no sera scrit, per testimonis que ells ne demanassen. Per que quascu se guart e ia com fara ses faenes, e com no, perco, que a dan ne a greuge no li puxa tornar. E per les raons desusdites fon fet aquest capitol; empero, salves totes convinences e promissions que l'senyor de la nau o leny hagues fetes als sobredits personers per alguna rao, e los personers a ell. E salvo encara, si lo dit senyor de la nau o leny haura comptat ab los personers, ab tots o ab la major partida, si al compte que ell los retra, los haura a dar algun guany, si ell per ventura darno l'los pora, e los dits personers li faran gracia que l'ne speraran, si ell, ans que dat los ho haia, morra, los dits personers deven esser pagats dels seus bens, si tots ne sabien esser venuts.

Capitol cxcvii. Declaracio del precedent.

Segons[1] que en lo capitol desusdit declara e demostra, tot senyor de nau o leny es tengut de retre compte a sos personers quascun viatge que ell fara, e si no u fahia, es ne tengut e obligat tot en axi com en lo capitol desusdit es contengut; mas empero, es

[1] *Segons*] Esp. 124, chapter cciv. commences here with the Rubric "Sagons que en lo capitol desusdit declara e demostra."

for his share, and it is reasonable, inasmuch as they would willingly take their share of any profit, if it existed, that they should pay their share of the said expenditure; further, for another reason, because the deceased, who was during his lifetime the managing owner of the ship or vessel, went, stayed, or navigated in the midst of them, and they did not constrain him to give them an account and to give them their shares of what he had gained. And if by chance he, who is dead intestate, has kept no register book nor written anything, the above-mentioned part-owners cannot demand of the heirs of the deceased anything, nor can the heirs or the administrators of the effects of the deceased demand anything from the above-mentioned part-owners on account of the expenditure of the ship or vessel which he has incurred, since there is no entry in the register book, although they may claim it upon oral evidence. Wherefore every one must beware how he transacts his business and how not, in order that it may not turn to his loss or prejudice. And for the reasons above said this chapter was made, nevertheless, saving all the contracts and promises which the managing owner of the ship or vessel may have made with the part-owners, for any reason, or the part-owners with him; and saving also, if the said managing owner of the ship shall have accounted with the part-owners, with all of them or the greater part, if upon the account which he has given them he shall have to pay them some profit, if he by chance could not pay them, and the said part-owners did him the favour to wait, if he died before he has paid them, the said part-owners ought to be paid from his effects, even if they must all be sold.

Chapter cxcvii. Explanation of the preceding.

According to what is declared and shown in the preceding chapter, every managing owner of a ship or vessel is bound to tender an account to the part-owners after every voyage which he shall make, and if he does not so do he is bound and responsible precisely as is contained in the preceding chapter; but nevertheless it is

axi a entendre, si l'senyor de la nau o leny sia o venga quascun viatges o alguns viatge que ell fara, en aquell loch on sien tots los personers o la major partida. E si lo senyor de la nau o leny fara port en algun loch on no haura personer algu, encara que ell navegara e fara viatge o viatges en moltes parts, on personer algu no haura ne sera, si al senyor de la nau o leny vendra algun cas de ventura, que ell perdra tot o partida d'aco que ab la nau o leny haura guanyat, si per culpa d'ell no s'perdra, ell no es tengut de res esmenar als sobredits personers, pus per culpa d'ell no sera perdut. Empero, si los dits personers empendran ab lo senyor de la nau o del leny, com ell se partira d'ells, o li diran, que si ell per ventura se aturara en algunes parts per navegar, que ell que l's deia trametre per quascun viatge que ell fara, tot co que a ells pertanyera del guany que ell fet haura, lo dit senyor de la nau o leny los ho deu trametre. Empero, si ell no l's ho tramet e s'ho retendra, si ell ho perdra, en qualsevulla manera que ell ho perda, ell los es tengut de tot restituir. E si ell no ha de que, ell es tengut tot en axi com en lo capitol desusdit es contengut. Empero, si los dits personers empressio alguna no faran ab lo senyor de la nau o leny, com ell se partira d'ells, ell no l's es tengut que res los trameta, e si l's ho tramet e s'pert, sera molt be perdut al senyor de la nau o del leny, qui sens lur manament los ho trametra. Empero, qualsevulla convinenca o empressio que lo senyor de la nau o del leny fara ab sos personers, com d'ells se partira, aquella es mester que l's attenga, e si ell per ventura no l's ho attendra, e per culpa d'ell romandra, ell es tengut de restituir tot lo dan que los

to be understood, that the managing owner of the ship or vessel comes on every voyage or on any voyage which he shall make to the place where the part-owners or the greater part are. And if the managing owner of the ship or vessel enters a port where no part-owner is, further, if he shall navigate and make a voyage or voyages in many parts, where no part-owner has been or will be, if any misfortune happen to the managing owner of the ship or vessel, so that he loses all or part of that which he has gained with the ship or vessel, and if he has not lost it through his own fault, he is not bound to make compensation to the above-mentioned part-owners, since it has not been lost through his fault. Nevertheless, if the said part-owners shall have arranged with the managing owner of the ship or vessel, when he left them, and have said that if he by chance should stay in any parts to navigate, that he ought to transmit to them for every voyage which he should make all which belonged to them of the gain which he had made, the said managing owner of the ship or vessel ought to transmit it to them. Nevertheless, if he has not transmitted it and shall retain it, if he shall lose it, in whatever manner he may lose it, he is bound to restore it all. And if he have not wherewithal, he is responsible precisely as is contained in the chapter aforesaid. Nevertheless if the said part-owners have not made any arrangement with the managing owner of the ship or vessel, when he parted from them, he is not bound to transmit any thing to them, and if he has transmitted any thing to them and it is lost, it will be property lost to the managing owner of the ship or vessel, who without their directions has transmitted it to them. Nevertheless, whatever contract or undertaking the managing owner of the ship or vessel shall have made with his part-owners, when he parted from them, it is proper that he should observe it, and if by chance he shall not observe it, and by his fault it shall be neglected, he is bound to restore all

dits personers ne sostendran, o sostengut ne hauran. Empero, si al senyor de la nau o leny ho tolra o vedara empediment de Deu o de mar o de senyoria o de males gents, que ell no attendra co que a sos personers promes haura, com d'ells se parti, e per culpa d'ell no romandra, ell a sos personers de la promesa no l's es de res tengut, perco com a empediment de Deu o de mar o de males gents no pot algu res dir ne contrastar. Empero, tot co que desus es dit que sia e deia esser menys de tot frau; e si frau algu provar sera, sia tengut de retre e restituir tot lo dan a aquella part, que sostengut lo haura, sens contrast e sens tota malicia. E per raons desusdites fon fet aquest capitol.

Capitol cxcviii. Del patro qui volra crexer la sua nau.

Senyor[1] de nau o leny, qui volra crexer la sua nau o lo seu leny, si ell es en loch on sien tots los personers o la major partida, lo senyor de la nau o leny los ne deu demanar, e si tots los dits personers ho volen, o la major partida, que la nau se cresca, lo senyor de la nau o leny la pot crexer, e tots los personers son hi tenguts de metre per la lur part aytant com d'aquell creximent los vendra. E si y ha personer, que y volgues contrastar, no pot, pus que ab sabuda e ab voluntat de la major part sera fet aquell creximent; e si lo senyor de la nau ha haura a manlevar, aquell personer n'es tengut, axi com en lo capitol desusdit es contengut. Encara mes: si lo senyor de la nau fa aquell creximent menys de sabuda e de voluntat dels personers, los personers no son tenguts al senyor de la nau de res a donar, si no axi com en lo capitol desusdit es contengut; e los personers no y poden res

[1] *Senyor*] Esp. 124, chapter ccv. commences here with the Rubric "Senyor de nau o de leyn qui volra crexar la sua nau o leyn."

the loss which the said part-owners shall sustain or shall have sustained. Nevertheless, if an impediment of God or of the seas, or of the local authorities, or of lawless men, shall have prevented or forbidden the managing owner of the ship or vessel from observing that which he has promised to the part-owners when he parted from them, and it shall not be neglected through his fault, he is not responsible to his part-owners for his promise, since no one can say or object in any way against an impediment of God, or of the sea, or of lawless men. Nevertheless, all which has been above stated should be and ought to be free of all fraud, and if any fraud can be proved, he is bound to render and restore all the loss to that party which has sustained it without dispute and without any malice. And for the reasons above said this chapter was made.

Chapter cxcviii. Of the managing owner who wishes to enlarge his ship.

A managing owner of a ship or vessel, who shall wish to enlarge his ship or vessel, if he is in a place where all the partowners are or the greater part, ought to ask their consent, and if all the said partners wish, or the greater part, that the ship shall be enlarged, the managing owner of the ship or vessel may enlarge it, and all the part-owners are bound to contribute for their shares as much of that enlargement as shall belong to them. And if there is a part-owner who wishes to object to it he cannot do so, provided that enlargement shall be made with the knowledge and consent of the greater part; and if the managing owner of the ship shall have to borrow, that part-owner is not responsible, as is contained in the preceding chapter.[1] Still more, if the managing owner of the ship makes that enlargement without the knowledge and consent of the part-owners, the part-owners are not liable to the managing owner of the ship to contribute anything, except as is con-

[1] *preceding chapter*] Chapter iii. is probably here intended.

contrastar, sino en axi com en lo capitol desusdit es contengut; e lo senyor de la nau es obligat als personers de totes aquelles convinences e empressions que al capitol de fet de adob parla e es contengut; perco, com creximent que hom fa a la nau es judicat per adob.

Capitol excix. Declaracio del precedent.

Segons[1] que diu e demostra en un capitol desusdit, que si senyor de nau vol crexer o fer algun creximent en sa nau o leny, si lo senyor de la nau es en loch on sien tots los personers o la major partida, lo senyor de la nau o leny los deu demanar del dit creximent, que el vol fer en la dita nau o leny, e si los dits personers tots o la major partida no volran que lo dit creximent se faca, lo dit senyor de la nau no u deu fer, ne l's ne pot forcar; mas lo dit senyor de la nau pot forcar los dits personers de aco que es dit en lo desusdit capitol, co es a entendre, d'encantar, e los dits personers al senyor de la nau o leny per aquella roa meteixa, e es ver e axi es acostumat de fer, empero segons que encant deu esser fet. E alla on diu e demostra, que si lo dit senyor de la nau o leny es o sera en loch, on no sien ne seran tots los dits personers ensemps o la major partida, que si lo dit senyor de la nau o del leny volra crexer la dita nau o lo leny, lo dit senyor de nau o leny ho pora fer, que personer algu no y pot en res contrastar, sino axi com en lo capitol desusdit es contengut, e es ver. Mas empero, es axi a entendre, que lo dit senyor de la nau o

[1] *Segons*] Esp. 124, chapter ccvi. commences here with the Rubric "Sagons que diu e demostra en un capitol desusdit senyor de nau."

tained in the preceding chapter;[1] and the part-owners cannot dispute any thing, except as is contained in the preceding chapter; and the managing owner of the ship is obliged to the part-owners to observe all the contracts and undertakings, which are spoken of and are contained in the chapter on the subject of repairs, because the enlargement which one makes to a ship is regarded as repairs.

Chapter cxcix. Explanation of the preceding.

According to what has been said and shown in the preceding chapter, that if a managing owner of a ship wishes to enlarge her or to make any enlargement in his ship or vessel, if the managing owner of the ship is in a place where all or the greater part of the part-owners are, the managing owner of the ship or vessel ought to demand their consent to the said enlargement which he wishes to make in the said ship or vessel, and if the said part-owners, all or the greater part, are not willing that the said enlargement should be made, the said managing owner of the ship ought not to make it, nor can he compel them to agree to it; but the said managing owner of the ship may compel the said part-owners to that which is said in the preceding chapter, that is to say, to put the ship up to sale, and the said partowners may compel the managing owner of the ship in like manner, and this is true and is accustomed to be done; nevertheless according to the manner in which a sale ought to be made. And this has been said and shown that, if the said managing owner of the ship or vessel shall be in a place where all the said part-owners or the greater part are not, and if the said managing owner of the ship or vessel shall wish to enlarge the said ship or vessel, the said managing owner of the ship or vessel may do so, so that no single part-owner can in any way object, except as is contained in the above-said chapter, and this is true. But nevertheless, it is to be understood that the said managing owner of the ship or vessel

[1] *preceding chapter*] Chapter vi. is probably here referred to.

leny no la cresca sino per dues raons, co es a saber, per gran nolit o gran viatge, que ell trobas, o per gran profit que l'dit senyor de la nau vees o conegues que n'vengues, o que n'pogues venir a si meteix e a tots los desusdits personers, co es a entendre, per pasatge, o per falliment d'altres naus o lenys que alguns mercaders no trobassen. E si lo dit senyor de la nau o leny fara lo creximent desusdit per les dues raons desusdites, los dits personers li son tenguts de pendre en compte tota la messio e despesa que lo dit senyor de la nau o leny haura feta per lo dit creximent, si donchs los dits personers lo contrari provar no li poran. E si lo dit contrari provar no li poran esser ver, sia que lo dit senyor de la nau o leny los aport guany o consumament, tot li deu esser pres en compte. E si lo dit senyor de la nau los aportara algun guany, los dits personers ne deven haver e pendre be e entegrament lur part, segons que quascu dels personers ha haura en la nau. E si lo dit senyor de la nau o leny aportara algun consumament als personers, los dits personers son tenguts de pagar al dit senyor de la nau o leny segons que a quascu dels dits personers ne pertanyera, segons la part que en la dita nau haura. E es rao, que axi com quascu prenguera part del dit guany, si lo dit senyor de la nau o leny lo l's hagues portat, axi es rao, que quascuns dels dits personers paguen sa part en lo dit consumament, si esdevenia per algun cas ; e pus que lo dit senyor de la nau o leny haura fet lo dit creximent a·bon enteniment e per los raons desusdites, e majorment pus lo dit contrari no li pora esser stat provat. Mas, empero, si los dits personers poran provar lo dit contrari al dit senyor de la nau o leny, aquell dit senyor de la nau o del leny, qui no

may not enlarge it except for two reasons, that is to say, for a great freight or a great voyage, which he has found, or for great profit, which the managing owner of the ship sees and knows that it will accrue or may accrue to himself and all the above-said part-owners, that is to say, from passengers, or from failure of other ships or vessels which certain merchants cannot find. And if the said managing owner of the ship or vessel shall make the enlargement above mentioned for the two reasons above said, the said part-owners are bound to take into account all the advances and expenses which the said managing owner shall have made for the said enlargement, if his said part-owners cannot prove the contrary. And if they cannot prove the contrary to be true, whether the said managing owner of the ship or vessel brings them gain or loss, all ought to be taken into account. And if the said managing owner of the ship shall bring them any gain, the said part-owners ought to have and receive well and entirely their shares, according to the share which each shall have in the ship. And if the said managing owner of the ship or vessel shall bring any loss to the part-owners, the said part-owners are bound to pay to the said managing owner of the ship or vessel according to what pertains to each of them in proportion to the share which he has in the said ship. And it is reasonable that according as each shall take a share of the gain, if the managing owner of the ship or vessel shall bring it to them, so each of the said part-owners should pay his share of the said loss, if it supervenes by any chance, and since the said managing owner of the ship or vessel has made the said enlargement with a good intent and for the reasons above said, and principally since the contrary cannot be established and proved. But nevertheless, if the said part-owners can prove the contrary against the managing owner of the ship or vessel, that said managing owner of the ship or vessel, which shall not have done the

haura feta la dita obra o creximent per les dites raons, ans ho haura fet per sa autoritat e per vanagloria del segle, e perco que les gens diguen que aytal es senyor de gran nau o de gran leny, aquella messio aytal que per aquella rao o raons, com desus son dites, sera feta, los dits personers no son tenguts que la li prenguen en compte, si los dits no u volran, si no en aytal manera, que aquella messio que per les raons desusdites sera estada feta, que sia mesa en coneguda e en vista e en poder de dos bons homens, e co que ells ne diran e conexeran que allo sien tenguts los dits personers de pendre en lur compte al dit senyor de la nau o leny, axi que la una part ne l'altra no pusca en res contrastar al dit e a la coneguda de aquells damunt dits dos bons homens. E en aquesta guisa, empero, que si los dits personers ne encantaran la dita nau o leny, e lo dit senyor de la nau o leny romandra en la senyoria, tot en axi com se era, e ab aquells meteixs sobredits personers; ne son tenguts de res a donar al dit senyor de la nau o leny de la dita messio, que axi com desus es dit sera stada feta, ne encara per los dits bons homens sera stada arbitrada o estimada o sentenciada, si no en axi com lo dit senyor de la nau o leny s'o guanyara ab la dita nau o leny, e encara li fan gran gracia com ell roman en senyoria de la dita, nau o leny, e com del tot la dita messio no li abatran del compte, que axi com desus es dit haura feta no raonablement: mas, en se fet e fas per esta rao, car en totes coses e en tots fets es bona egualtat e temprament e convinenca de bons homens. Empero, si los dits personers encantaran la dita nau o leny al

said work and enlargement for the said reasons, and on the contrary has done them by his own authority and from vain glory of the world, and in order that people may say that such a one is the managing owner of a great ship or a great vessel, that expenditure which shall have been made for that reason or reasons, as above stated, the said part-owners are not bound to take into account, if they do not wish it, unless they do so in this manner, that the expenditure which has been made for the aforesaid reasons shall be submitted to the judgment and inspection and the power of two honest men, and that which they shall say and adjudge the said part-owners shall be bound to take into account with the said managing owner of the ship or vessel; so that neither the one party nor the other can object in any way to the decision and adjudication of the above-mentioned two honest men. And in this manner, however, that if the said part-owners should not put up to sale the said ship or vessel, and the said managing owner of the ship or vessel shall remain in the management, precisely as he was beforehand, and with the very same above-mentioned part-owners, they are not bound to pay anything to the said managing owner of the ship or vessel for the said expenditure which shall have been made as above said, and further shall have been ascertained by the arbitration and estimation and sentence of the said two honest men, except in proportion as the said managing owner of the ship or vessel shall have made gain with the said ship or vessel, and further they do him a great favour, inasmuch as he remains in the management of the said ship or vessel, and inasmuch as they do not reject from the account all of the above-said expenditure which he has incurred injudiciously; but it is done so on this account, that in all things and in all actions the equity and the arbitration and the arrangement of honest men is a good thing. Nevertheless, if the said part-owners put up the said ship or vessel to

dit senyor, e l'gitaran de tot de la senyoria e desposseyran, los dits personers son tenguts de donar e pagar al dit senyor tota la messio e despesa, que per los dits bons homes los sera estada, arbitrada, o estimada, o sentenciada, en continent que los dits personers hauran la dita nau o leny encantat, e aquell qui n'era senyor ne hauran gitat. Empero, si aquell qui era senyor de la dita nau o leny haura manlevats alguns diners per rao de la dita obra o creix, que ell axi com desus es dit haura fet no degudament, si ell ne dara loguer o n'haura donat, los dits personers no son tenguts de metre ne de pagar part en lo dit loguer, si donchs los dits personers fer no u volran. Mas empero, si lo dit senyor de la nau o leny haura feta la dita obra o creximent per les raons desusdites: si lo dit senyor de la nau o leny haura manlevada moneda d'algu per rao de la dita obra o crex, si lo dit senyor ne dara loguer o l'ne haura donat, los personers hi son tenguts de metre e de pagar, segons que a quascu pertanyera, e segons la part que en la dita nau o leny haura, sens tot contrast. E jat sia aco, que en lo capitol desus diga e demostra, que creximent que hom faca a alguna nau o leny, que s'jutge per adob, ver es; mas, en tal guisa se pot hom flixar de creximent, que no s'deu ne s'pot flixar de adob, que haura ops la dita nau o leny. E axi los dits senyors de naus o lenys deven se guardar com seran en algun loch estrany o privat, si ells volran per alguna obra o algun creximent en lurs naus o lenys, que ells que u facen ab justa rao o raons, perco que l's casos desusdits no li puscan esser desus possats, e perco que l'dan desusdit

sale against the said managing owner, and cast him from and dispossess him of the management, the said part-owners are bound to pay to the said managing owner all the advances and expenses which shall have been arbitrated, or estimated, or adjudged by the said honest men, as soon as the said part-owners shall have put the said ship or vessel up to sale, and have dismissed him who was the managing owner. Nevertheless, if he who was the managing owner of the said ship or vessel shall have borrowed any money by reason of the said work or enlargement, which he shall have made as above said injudiciously, and if he shall pay or shall have paid interest for it, the said part-owners are not bound to contribute or to pay any part of the said interest, unless the said part-owners are willing. But nevertheless, if the said managing owner of the ship or vessel shall have made the said work and enlargement for the reasons above mentioned, if the said managing owner of the ship or vessel shall have borrowed money of any one by reason of the said work or enlargement, if the said managing owner shall pay or shall have paid interest, the part-owners are bound to contribute and to pay according as shall pertain to each, and according to the share which he shall have in the said ship or vessel, without any dispute. And although it may be true, as said and shown in the preceding chapter, that the enlargement which a man makes in a ship or vessel may be regarded as repairs, nevertheless a man may dispense with an enlargement of his vessel, whilst he cannot and ought not to dispense with repairs of which the said ship or vessel shall have need. And accordingly the said managing owners of ships or vessels ought to beware, when they shall be in a strange or private place, if they wish to make any work or any enlargement in their ships or vessels, that they make it for a just reason or reasons, in order that the cases above mentioned may not apply to them, and in order that the loss above mentioned may

no l's pusca desus venir: salves empero totes convinences o empreniments fets entre los senyors de les naus e los personers en totes e per totes coses. E per les raons dites fon fet aquest capitol.

Capitol cc. De adob de nau.

Senyor[1] ne nau o leny, de qui la sua nau haura ops adob, si lo senyor de la nau es en loch on sien sos personers tots o partida, lo senyor de la nau deu dir e demostrar a aquells personers aquell adob que la nau o leny haura mester; e si los personers o volen, ell ho deu adobar, e l's personers son tenguts metre en lo adob, quascu tant com li vendra a la sua part. E si hi haura algun d'aquells personers qui no volra pagar co que a ell vendra, e lo senyor de la nau ho haura a manlevar, lo personer n'es tengut e obligat, axi com lo capitol desusdit conte. E si los personers no volran que la nau o leny se adob, perco car per ventura ell costaria mes de adobar, que no valria; o encara mes, que com la nau o leny sera adobt e ells lo volran vendre, ells no trobarien tant com ell costaria de adob; perco lo senyor de la nau o leny no deu adobar sa nau o leny menys de voluntat dels personers, pus sia en un loch ab ells, ne l's ne pot forcar, mas lo senyor de la nau pot forcar de vendre e de encantar als personers, pus que ells no volran que la nau o leny se adob, e los personers ne poden forcar aytambe al senyor de la nau o del leny, que a encant no y ha nengu senyor, que tots son e deven esser personers simples, si donchs algunes convinences no havia entre ells, que algu de l's personers hi degues haver qualque senyoria. E si lo senyor adobara la nau o leny menys de volun-

[1] *Senyor*] Esp. 124, chapter ccvii. commences here with the Rubric "Senyor de nau o de leyn, de qui la sua nau o l'seu leyn aura ops adob."

not fall upon them, saving, however, all the contracts and agreements made between the managing owners of ships and the part-owners in all and for all matters. And for the reasons above stated this chapter was made.

Chapter cc. Of the repairs of a ship.

A managing owner of a ship or vessel, whose ship has need of repairs, if he is in a place where all or part of his part-owners are, ought to tell and show to those part-owners what repairs the ship has need of; and if the part-owners are willing he ought to repair it, and the part-owners are bound to contribute to the repairs, each for as much as shall belong to his share. And if there be any of such part-owners who is not willing to pay that which devolves upon him, and the managing owner of the ship has to raise a loan,[1] the part-owner is bound and responsible, precisely as the preceding chapter states. And if the part-owners are not willing that the ship or vessel be repaired, because by chance it will cost more to repair her than she is worth, or further, when the ship or vessel shall have been repaired and they wish to sell her, they will not obtain as much as it has cost them to repair her; for this reason the managing owner of the ship or vessel ought not to repair his ship or vessel without the consent of the part-owners when he is in a place with them, nor can he compel them, but the managing owner of the ship may compel the part-owners to sell and to put the ship up to sale when they shall not be willing that the ship or vessel should be repaired, and the part-owners can equally compel the managing owner of the ship or vessel, for there is no managing owner as regards the sale, but all are and ought to be simple part-owners, unless there is some contract amongst them that one of the part-owners shall have some advantage over the others. And if the managing owner shall repair the ship or vessel without

[1] *raise a loan*] Upon the part-owner's share, as explained in chapter iii.

tat dels personers, personer algu no li es tengut de res a donar d'aco que costara aquell adob, qui menys de sabuda d'ells sera fet, mas lo senyor de la nau se deu pagar axi com la nau o leny s'ho guanyara, que a allo personer algu no y pot res contrastar. Mas, si la nau o leny se perdra ans que l'senyor sia pagat d'aco que haura prestat a aquell adob, personer algu no li es tengut de fer esmena. Mas, com la nau o leny se perdra, si exarcia alguna se restaurara, lo senyor de la nau se deu entegrar; que personer algu no lo y pot contrastar: e si res hi sobre, lo senyor de la nau ho deu retre e donar a quascu personer, tant com li venga per la sua part. E si alguns dels personers volran vendre aquella part, que hauran en la nau que sia adobada, ell se deu fadigar a aquell qui senyor ne sera, car aquell hi haura hagut molt de maltret, e hi haura bestret tot aquell adob. E si aquell personer no se n'pot avenir ab aquell qui senyor ne sera, sia mes en poder de dos bons homens de mar qui vegen aquell adob, ja quant costa, perco que si aquell personer venia la sua part a altri, que entre lo senyor de la nau e aquell qui aquella part compraria, no pogues haver contrast. E tot co que aquells dos bons homens ne diran, o n'faran, allo n'sia seguit; axi que l'senyor de la nau, ne aquell personer, per que lo contrast seria, no y puguen contrastar, mas tot co que ells ne diran, ab consell que n'demanen a homens de mar, allo n'sia seguit. Salvo empero, que si lo senyor

the consent of the part-owners, no part-owner is bound to contribute any thing to the cost of the repairs which shall be made without their knowledge, but the managing owner of the ship ought to pay himself when the ship or vessel shall make gain, and no part-owner can object in any way. But if the ship or vessel shall be lost before the managing owner shall be paid for that which he has borrowed for the repairs, no part-owner is liable to make him compensation. But, when the ship or vessel shall be lost, if any apparel be rescued, the managing owner ought to have the whole of it, and no part-owner can object in any way, and if any surplus remains, the managing owner ought to render and pay to each part-owner so much as shall devolve to his share. And if any of the part-owners wish to sell the share, which they have in the ship which shall have been repaired, he ought to announce it[1] to him who shall be the managing owner, for he will have had much trouble and will have disbursed for all those repairs. And if that part-owner cannot agree with him who is the managing owner, let it be referred to the decision of two prudhommes[2] of the sea, who shall value those repairs how much they cost, in order that if that part-owner sells his share to another, there can be no dispute between the managing owner of the ship and the purchaser of the share. And all what those two prudhommes shall say and do shall be implicitly followed, so that neither the managing owner of the ship nor that part-owner can dispute any thing, but all that which they shall decide with the advice, which they shall demand from other navigators, shall be followed. Saving

[1] *announce it*] In accordance with the provision of chap. x., whereby the managing owner is entitled to an option of becoming the purchaser.

[2] *prudhommes*] "Bons homens de "mar" here probably means two honest men well versed in the business of navigation.

de la nau sera en loch on no haura algun personer, e la nau o leny haura tan gran ops adob, que menys de adob no pogues navegar, lo senyor de la nau deu guardar lo profit de si e de sos companyons, e perco deu mes amar lo profit de sos companyons com ells no y seran; encara perco car ells lo hauran fet senyor del lur, per que ell deu guardar si metex de blasme e de dan, e encara mes aquells qui en ell se fian. E si lo senyor de la nau veu e coneix que aquell adob, que la nau ha mester, sia o deia esser mes a profit dels personers que a dan, segons son semblant e segons sa conexenca e sa conciencia; allo que a ell ne sia semblant, allo n'deu fer a son bon enteniment. E qualsevol cosa que ell ne faca, sia que la adob, o que la vena, tot li deu en be esser pres, pus que ell ho haura fet a bona entencio; e axi los personers no poden res contrastar en co que ell ne faca; per que quascu se guart a qui fara part, si donchs no era empres entre l'senyor de la nau e los personers, que ell no degues adobar ne vendre la nau o leny, si no u fahia ab voluntat de tots los personers o de la major partida. Empero, si aquella convinenca no era entre ells, aquella cosa que l'senyor de la nau ne fara, aquella n'hauran a seguir los personers; salvo que si ell la jugaba o baratrava o la perdia per sa culpa, aquell los es tengut de esmenar, axi com en lo capitol disusdit se conte. E aquest capitol fon fet, que s'guart quascu a qui fara part, e a qui comanara lo seu e a qui no, e com e com no lo li comanara, que les convinences, que entre ells seran empreses, aquelles se hauran a seguir.

nevertheless, if the managing owner of the ship shall be in a place where there shall be no part-owner, and the ship or vessel has no such great need of repairs that she cannot sail without such repairs, the managing owner ought to protect the interests of himself and his partners, and he ought to prefer the interests of his partners since they are not present, likewise because they have made him managing owner of their property, wherefore he ought to guard himself from blame and loss, and much more those who have put confidence in him. And if the managing owner of the ship sees and judges that the repairs, of which the ship has need, are and ought to be more for the profit than for the loss of the part-owners, according to his view and his judgment and his conscience, he ought to do with good intent all that seems proper to him. And whatever thing he shall do, whether he repairs or sells, all ought to be well received, for he will have done it with a good intention, and accordingly the part-owners cannot dispute any thing which he shall have done; wherefore every one should beware with whom he enters into partnership, if it shall not be agreed upon between the managing owner of the ship and the part-owners, that he ought not to repair nor to sell the ship or vessel, unless he does so with the consent of all the part-owners or of the greater part. Nevertheless, if that contract does not exist between them, whatever thing the managing owner shall do, the part-owners must follow, saving if he shall gamble away or dissipate or lose the ship through his fault, he is bound to indemnify them, as in the preceding chapter has been stated. And this chapter has been made that every one should beware with whom he shall enter into partnership, and to whom he shall intrust his property and to whom not, and when he shall intrust it to them, that he shall have to follow the conventions which have been executed between them.

Capitol cci. De orbar ancores.

Senyor[1] de nau o leny qui pendra o fara pendre senyals, gayatells, o races de ancores d'alguna nau o leny qui prop d'ell stara ormeiat, si aquelles ancores se perden, aquell senyor d'aquella nau qui haura orbades aquelles ancores, o fetes orbar, es tengut de esmena a aquell senyor d'aquella nau de qui aquelles ancores seran, tot co que ell dira per son sagrament que valguessen; encara li es tengut de fer esmena de tot lo destrich que ell ne sostenga. Encara mes, si aquell senyor, de qui aquelles ancores seran, se vol, ell se n'pot clamar a la senyoria, e demanar a aquell senyor d'aquella nau o leny, qui aytal cosa haura feta o feta fer per ladronici. Encara mes, si mariner algu orbara ancores menys de voluntat e menys de sabuda d'aquell senyor de nau, ab qui ell sera, si lo mariner ho fara per sa autoritat, e menys de comendament, ell es posat en aquella pena que l'senyor de la nau devria haver, si comendament li n'hagues fet. Encara mes, que si aquells mariners qui aytal cosa hauran assaiada de fer, no hauran de que pagar aquelles ancores que per culpa d'ells seran perdudes per co com ells les haura orbades; encara mes, si ells no poden entregar lo dan e l'destrich e la messio, que l'senyor d'aquella nau ne haura sostengut, aquells mariners deven esser presos e mesos en preso, e star tant tro que haien satisfet a aquell senyor de aquella nau de tot lo dan e de tot lo interes, que ell dira per son sagrament, que per culpa d'ells haura sostengut; si donchs aquell senyor d'aquella nau no l's volia fer gracia que l's speras per dies e per hores, o que vulla que ells guanyen ab ell tot co que li haurien a donar en esmena del dan que per culpa d'ells haura sostengut. E aco sia en voluntat d'aquell senyor de nau, qui aytal dan haura sostengut, de fer d'aquelles coses desusdites, qual el mes se volra; co es de esperarlos, o de metre l's en preso,

[1] *Senyor*] Esp. 124, chapter ccviii. commences here with the Rubric "Senyor de nau o de leyn qui pendra o fara pendre senyals, gayatells."

Chapter cci. Of stripping anchors of their buoys.

If a managing owner of a ship or vessel shall take away or cause to be taken away the marks, buoys, or floats of the anchors of any ship or vessel which shall be moored near him, that managing owner of the ship who shall have stripped or cause to be stripped those anchors is bound to make compensation to the managing owner of that ship to which those anchors belong, for as much as he shall declare upon his oath that they were worth; still more he may complain to the local authorities and sue that managing owner of that ship or vessel, who has done or caused to be done that thing, for robbery. Still more, if any mariner shall strip an anchor of its buoy without the consent or knowledge of the managing owner of the ship to which it belongs, and if the mariner shall have done this of his own authority and without orders, he is subject to the same penalty as the managing owner would have incurred if he had given the orders. Still further, if those mariners who shall have ventured to do such a thing, have not wherewithal to pay for those anchors which shall be lost through their fault; still further, if they cannot repair the loss and the detriment and the expense which the managing owner of that vessel shall have sustained, those mariners ought to be taken and put into prison and remain there until they have satisfied the master of that ship for all the loss and all the interest which he shall declare, upon his oath, that he has incurred through their fault; unless the managing owner of that vessel shall be willing to show grace to them and wait for days and for hours, and is willing that they shall gain with him all which they shall have to pay him for compensation of the loss, which he has sustained through their fault. And it shall be at the option of that managing owner of a ship, who shall have sustained any such damage, to do of the things above mentioned that which he shall most wish; that is, to wait for them to pay, or to put them into prison, or to

o que ell los vulla fer gracia que u guanyen ab ell. E fo fet aquest capitol, que si aquella pena desusdita no y era posada, molt dan e treball se seguiria. Encara, si alguna nau tendra prois, e perco que l'prois no frete, ne s'encaste, haura y posats senyals que l' sospenan; qui aquells senyals que l'ne levara o fara levar, en aquella pena metexa deu esser posat que desus es dita.

Capitol ccii. De nau qui ira a parts.

Senyor[1] de nau o leny qui menara la sua nau a parts, ell es tengut de fer scrivre totes les convinences e empreniments, que ell fara o haura fetes ab tots aquells mariners que ab ell hauran anar a parts. Encara mes, deu fer scrivre lo dit senyor de la nau en presencia de tots los mariners o de la major partida, ja quantes parts pendra la nau e quantes parts faran per tots, e a qui deu fer millorament e a qui no, e quant e quant no, perco que a la particio entre los mariners e l'senyor de la nau no pogues haver algun contrast. Encara, es de mes tengut lo senyor de la nau, que ell deu mostrar tota la exarcia que la nau haura a tots los mariners ensemps, o a la major partida si tots no y poden esser, perco car si los mariners conexien ab lo senyor de la nau ensemps, que y hagues exarcia que hagues ops o adob o enfortiment, que lo senyor de la nau que u degues fer fer al scriva, e perco que no y pogues haver entre ells algun contrast, que si alguna exarcia se perdra, que l's mariners no y poguessen metre algun contrast, que diguessen, que ells no havien vista aquella exarcia, que perduda sera, perco com de comu s'a esmenar. E si lo senyor de la nau fara aco que desus es dit, los mariners li son tenguts de servir tot axi com si anassen a loguer sabut; e encara mes, que per neguna rao no poden metre contrast,

[1] *Senyor*] Esp. 124, chapter ccix. here begins with the Rubric "Senyor de nau o de leyn qui menara la sua nau a parts"

show them grace that they may gain money in his service. And this chapter was made, because if the penalty aforesaid were not imposed, much loss and trouble would ensue. Further, if any ship rides by her cable, and in order that her cable should not chafe or get fast in the mud, shall put out marks to suspend it, he who shall take away or cause to be taken away those marks ought to have the said penalty inflicted upon him as above mentioned.

Chapter ccii. Of a ship which shall sail on shares.

The managing owner of a ship or vessel who shall navigate his vessel on shares, is bound to commit to writing all the contracts and agreements which he shall make or shall have made with all the mariners who have to sail with him on shares. Still more, the said managing owner of the ship ought to write out in the presence of all the mariners or of the greater part, how many shares the ship shall take, and how many they all shall take, and to whom there ought to be a greater share and to whom not, and how much so and how much not, in order that at the division of the proceeds between the mariners and the managing owner of the ship there may not be any dispute. Likewise the managing owner of the ship is bound to shew all the apparel, which the ship has, to all the mariners together, or to the greater part, if all cannot be there, in order that if the mariners judge together with the managing owner of the ship, that there is any apparel which has need of repair or of being strengthened, the managing owner should have it done by the ship's clerk, in order that there may be no dispute between them, and if any apparel should be lost, that the mariners may not be able to raise any dispute, or to say that they have not seen the apparel which shall have been lost, since it has to be made good from the common fund. And if the managing owner of the ship shall do as above-said, the mariners are bound to serve precisely as if they were going to a given place; and still more, they cannot object for any reason, except under the circumstances

salvo per aquelles condicions que en los capitols desusdits son ya certificades e esclarides. En axi lo senyor de la nau o leny, quant Deu los haurat donat a guanyar, deu los donar be e lealment les parts que a quascu pertanyen tot on axi com entre lo senyor de la nau e los mariners sera empres, e axi com en lo cartolari de la nau sera scrit. E lo notxer es tengut, sots pena del sagrament que ell fet ha, de guardar tot lo profit de aquells mariners, que ells be e integrament haien, tot co que l'senyor de la nau los haura promes lo dia que ells se acordaren ab ell. E l'escriva es tengut de guardar lo profit de la nau sots aquella meteixa pena que al notxer es posada, que ell no y faca res enginyosament per la nau ne per los. mariners, mas que be e lealment do sa part que a la nau pertanyera e als mariners atresi. E l'notxer e l'escriva deven ne haver millorament, co que entre ells estara empres com la nau comencara de acordar los mariners. E si per ventura entre ells no es estat empres, ells ne deven haver quascu una part per honrament e per rao del maltret, que ells hi hauran per tot lo cominal de la nau; e aquelles dues parts devense levar de tot lo comu ensemps. Ara parlem de les condicions, si per cas de ventura hi venien. Si nau o leny ira ab veles, e anant ab veles, ella perdra arbre o antenes o vela alguna, los mariners no son tenguts de esmena a fer, si donchs lo senyor de la nau o lo notxer no l's havia manat, abans que l'arbre o les antenes o la vela se perdes, que calassen; e si lo senyor de la nau los

which have been certified and declared in the preceding chapters.[1] Accordingly the managing owner of the ship or vessel, if God permits them to make gain, ought to distribute well and loyally the shares which shall appertain to each precisely as it shall have been agreed upon between the managing owner of the ship and the mariners, and as it shall be written in the register book of the ship. And the mate is bound under the penalty of the oath which he has taken, to keep safely all the gains of those mariners, so that they may enjoy well and fully all that, which the managing owner of the ship shall have promised them on the day on which he engaged them. And the ship's clerk is bound to keep safely the ship's gains under the very same penalty that is imposed on the mate, that he do nothing craftily either for the ship or for the mariners, but will honestly and loyally assign the part which shall appertain to the ship, and that which shall appertain to the mariners. And the mate and the ship's clerk ought to have over and above what was agreed upon with them, when the ship began to engage the mariners. And if by chance no agreement was made with them, they ought to have each a share as a compliment, and by reason of the trouble which they have had for all the crew of the vessel, and those two shares should be taken out of the whole common fund together.

Now let us speak of the conditions which may arise from the accident of bad weather. If a ship or vessel shall be navigated with sails, and when under sail shall lose a mast or a yard or any sail, the mariners are not bound to make any compensation, unless the managing owner of the ship or the sailing master has ordered them, before the mast or yard or sail was lost, to furl sail, and if the managing owner of the ship has given them the

[1] *preceding chapters*] The reference is probably to chapters cx. and cxi. The subject is again discussed in chap. cclii.

havia fet manament que calassen, e ells no havien volgut calar, e per aquella rao aquella exarcia que desus est dita se perdra, los mariners son tenguts de tota aquella exarcia a esmenar, axi es a entendre, que tot lo cominal de la nau la deu pagar. E si lo senyor de la nau o leny, o lo notxer manaran surgir ancores en qualche loch que ells seran, e los mariners diran que aquella exarcia, ab que ells manen surgir aquelles ancores, no es suficient, e si les ancores se perdran sobre allo que l's mariners hauran dit al senyor de la nau o al notxer, e aquells no faran cambiar la exarcia en les ancores que hauran manades surgir, los dits mariners no son tenguts de alguna esmena a fer, pusque ells ho hauran dit al senyor de la nau, e demostrat al notxer. E si los mariners no u diran, ne u demostraran al senyor de la nau ne al notxer, e aquelles ancores se perdran, ells son tenguts de esmena a fer, perco car ells surgiren aquells ancores, e no digueren ne denunciaren que aquella exarcia no era forta ne bona. Encara mes, si a la nau vendra cas de ventura que n'vaia en terra, e s'romp, si lo guany que la nau haura fet, sera tant que bastas aquella nau a refer, lo senyor de la nau le n'pot refer. E si ell refer no la n'volia, aquella nau deu esser preada e portada a preu entre lo senyor de la nau e los mariners, ja que valia aquella nau com ana en terra. E si entre ells no se n'poden avenir, deu esser mes aquell contrast, que entre ells sera, en poder de dos bons homens que sien e sapien be e diligentment de la art de la mar, e qualsevulla cosa, que aquells ne diran, allo n'deu esser fet e seguit. E si exarcia s'y salvara, aquella exarcia e tot co que salvat ne sera, tot deu esser preat e mes en preu al senyor de la nau. E com lo senyor de la nau sera entegrat, si

order to furl sail, and they have not been willing to furl sail, and for that reason the apparel in question has been lost, the mariners are bound to compensate all the loss of apparel, that is to say, the entire common fund of the ship ought to pay for it. And if the managing owner of the ship or vessel, or the mate shall give the order to weigh anchor in some place where they shall be, and the mariners say that the tackle with which they are ordered to weigh the anchors is insufficient, and if the anchors are lost after all which the mariners have said to the managing owner of the ship or to the mate, and they have not changed the tackle of the anchors which they have ordered them to weigh, the said mariners are not bound to make any compensation, since they told it to the managing owner of the ship and announced it to the mate. And if those mariners did not tell it nor announce it to the managing owner of the ship nor to the mate, and those anchors are lost, they are bound to make compensation, because they weighed those anchors and did not say nor warn them that the tackle was not strong nor good. Still further, if an accident happens to the ship and she goes ashore, and is stove in, if the gain which the ship has made shall be as much as shall be sufficient to refit her, the managing owner may refit her. And if he does not wish to refit her, the ship ought to be valued and appraised between the managing owner of the ship and the mariners for what she was worth, when she went ashore. And if they cannot agree together, the dispute which shall arise between them ought to be submitted to the decision of two respectable men who are skilful and well and accurately versed in the art of navigation, and whatever thing they shall say, it ought to be altogether done and followed. And if the ship's apparel shall be saved, that apparel and all that which shall be saved ought to be valued and appraised for the managing owner of the ship. And when the managing

alguna cosa de aquell guany que ells fet hauran sobrara, tota deu esser partida per tots cominalment, axi com entre ells sera empres. E si, per ventura, lo guany que ells fet hauran no bastara a esmena a fer a aquella nau que de tot rota sera, o empartida, los mariners no li son tenguts de alguna esmena a fer, perco com lo mariner assats hi pert, pusque y pert son temps e y haura consumada sa persona: empero, los mariners son tenguts al senyor de la nau d'ajudar a salvar tot co que ells poran be e lealment e retre e donar tot co que ells salvar ne poran al senyor de la nau. Encara mes: si, per ventura, la nau no haura guanyat res, los mariners son tenguts de retre e de donar al senyor de la nau tot co que haura despes en vianda de aquell jorn que ells se acordaren, tro fins que ells se partiren de la nau. E aco deven los mariners pagar, menys de tot contrast, que lo senyor de la nau assats hi pert; pus hi consuma la nau e si metex. E lo senyor de la nau pot a aquell mariner, qui contrast hi meta, allo que a ell ne vendra que deia pagar per la sua part axi demanar, com si li u hauria comanat ab carta: e pot ho metre en poder de la senyoria, e aquell mariner deu estar tant pres, tro que haia satisfet de tot co que a donar haura a aquell senyor de la nau, o que se n'sia avengut ab ell. Empero, si lo senyor de la nau veura, o coneixera, que aquell mariner, que li contrastara, no u fara per alguna altra malesa, sino que ne ha de que pagar ne entegrar, lo senyor de la nau es tengut que deia esperar per dies e per hores tant tro que ell ho pusca haver

owner of the ship shall have been reimbursed, if any surplus of that gain which they have made remains, all ought to be shared amongst all in common according as shall be agreed upon amongst them. And if by chance the gain which they have made shall not suffice to make compensation for the ship which shall be broken up altogether or only in part, the mariners are not bound to make any compensation, because the mariner has lost enough, since he has lost his time, and has wasted his bodily strength; nevertheless, the mariners are bound to the managing owner of the ship to assist[1] in saving all that they can honestly and loyally, and to render and give up all that which they have been able to save to the managing owner of the ship. Still further, if by accident the ship has gained nothing, the mariners are bound to render and to pay to the managing owner of the ship all, which he has spent in provisions from the day when he engaged them until the time when they departed from the ship. And this the mariners ought to pay without any dispute, for the managing owner of the ship has lost enough, since he has wasted both his ship and his time. And the managing owner of the ship may demand of the mariner, who has raised a dispute, that he should pay for his share what devolves upon him, just as if he had intrusted it to him by writing, and may give him into the custody of the local authorities, and that mariner ought to be kept in prison until he has satisfied that managing owner of the vessel in respect of all that he ought to pay him, or shall arrange with him. Nevertheless, if the managing owner of the ship shall see and recognise, that the mariner who objects to pay, does not do so from any ill-will, but only because he has not wherewithal to pay or to reimburse him, the managing owner is bound and ought to wait for days and hours until he shall be able to make

[1] *to assist*] This obligation of the mariners is recognised in art. 3 of the Rolls of Oleron.

guanyat, en axi empero, que l'mariner es tengut al senyor de la nau de asegurarlo y ab carta o ab fiances, perco que l'senyor de la nau no u pusca perdre, ell ne los seus. Encara mes, si algu dels mariners perdra alguna roba a servici de la nau, si la nau guanya, aquella roba deu esser retuda a aquell mariner qui aquella roba haura perduda, si ell provar ho pot. E si ell provar no u pot, no li n'es hom tengut de esmena a fer. E si per ventura la nau no guanyara, no li es algu tengut d'aquella roba, que ell perduda haura, de esmera a fer, per testimonis que ell ne donas, car assats hi pert quascu, pusque hi pert son temps e y consuma sa persona. E fon fet perco aquest capitol, car molt senyor de nau o leny hauria sa nau vella podrida, e si sabia que l's mariners qui ab ell irien a parts, si ell rompia la nau li fossen tenguts de la nau esmenar, per fort poca de fortuna que fes, ell faria en guisa e en manera que perdes la nau, perco que ell ne pogues haver d'esmena mes que no valrien dues naus aytals com aquella. E per aquelta rao los mariners qui van a parts, no son tenguts de esmena a fer a la nau que rota sera, sino tant solament del guany que ells ab la nau hauran fet, tot en axi com en lo capitol desusdit es declarat e certificat.

Capitol cciii. De exarcia tolta per lenys armats.

Si alguna[1] nau o algun leny ira a parts, e sera cas de ventura que aquella nau o leny qui a parts ira se encontrara ab lenys armats, si aquells lenys armats li tolran o se n'portaran vela o veles, gumena o gumenes, o ancora o ancores, o alguna altra exarcia, aquella exarcia deu esser esmenada per tot lo cominal de la nau, e es axi a entendre, que quascu sia tengut de metre en la esmena que per aquella exarcia se haura a fer, qui

[1] *Si alguna*] Esp. 124, chapter ccx. commences here with the Rubric "Si alguna nau o algun leyn "ira a parts, e sera cas de ventura."

some gain, subject, however to the condition, that the mariner is bound to secure the payment to the managing owner of the ship either by a writing or by sureties, in order that the managing owner of the ship may not lose all, either for himself or his heirs. Still more, if any of the mariners lose any goods in the service of the ship, if the ship makes gain, those goods ought to be replaced to the mariner who has lost them, if he can prove it. And if he cannot prove it, no one is bound to make him compensation. And if by chance the ship shall not gain anything, no one is to make him any compensation for the goods which he shall have lost, whatever evidence he may produce, for every person has lost enough, since he has lost his time and has wasted his strength. And this chapter was made, because many a managing owner of a ship or vessel will have an old and decayed vessel; and if he knew that the mariners which sail with him for shares, if he breaks up his ship, would be bound to indemnify him for it, he would upon a very little bad weather overtaking him act in such a guise and manner that he would lose his ship, in order that he might have for compensation more than two such ships as his own were worth. And for this reason the mariners, who sail for shares, are not bound to make compensation for the ship which shall be broken up, but only in respect of the gain which they have made with the ship, precisely as in the preceding chapter is declared and certified.

Chapter cciii. Of tackle carried off by armed vessels.

If any ship or any vessel shall be navigated on shares, and there shall be any case of misfortune, and the ship or vessel which shall be navigated on shares shall meet with armed vessels, if those armed vessels shall capture and carry away a sail or sails, a cable or cables, an anchor or anchors, or any other apparel, that apparel ought to be made good by all the ship's company, and it is to be understood that every one is bound to contribute to the compensation which is to be made for that apparel, which shall be captured, for as many shares as

tolta la sera, per aytantes parts com pendre deu; empero es axi a entendre, que la nau o leny hagues guanyat, e de aquell guany que aquella nau o leny hagues fet que sia esmenada aquella exarcia, que aquells lenys armats se n'haurien portada. E si per ventura lo guany, que aquella nau o leny haura fet, no bastava a aquella exarcia a esmenar, los mariners qui iran a parts no sien tenguts de alguna altra esmena a fer, perco com lo sobredit mariner ne algun altre, com parteix de son alberch e va ab algu a guanyar, no u fa per fe, que per algun cas de ventura que esdevenga a la nau on ell deu anar a guanyar, que la roba que ell jaqueix en casa li hagues ajudar a esmena; que se u fahia, mas li valria que romangues. Encara mes per altra rao, car lo mariner assats hi pert, pusque y pert son temps, e y haura rotes les vestidures e consumades, e y haura consumada sa persona. Empero, si lo guany, que la nau o leny haura fet, bastara a aquella exarcia esmenar que tolta los sera, lo senyor de la nau o leny, que aquella esmena haura presa, deu jurar en presencia de tot lo cominal de la nau o leny, que ell que la deia cobrar com abans pusca, e que y faca tot son poder. E si ell cobrar la pot, ell es tengut de retre tot co que ell haura pres dels sobredits mariners en esmena d'aquella exarcia, que aquells lenys armats los havien tolta, sens tot contrast. E si per ventura en la nau o leny haura alguna partida dels mariners qui ho contrastaran, que aquella exarcia, que aquells lenys armats los hauran tolta, que no deia esser esmenada del guany que l'leny fet haura, perco car es cas de ventura, no u deven fer no poden. Car si als sobredits mariners o altres, estant ells en la nau o leny, venia cas de ventura que s'encontrassen

he ought to receive; nevertheless it is to be understood that the ship or vessel has made some gain, and that the apparel which those armed vessels have carried off is to be compensated for out of that gain which the ship or vessel has made. And if by chance the gain which that ship or vessel has made does not suffice to compensate for that apparel, the mariners, who shall sail on shares, are not bound to make any other compensation, because neither any of the aforesaid mariners nor anyone else when he leaves his home and sails with anyone to make gain, does so in the expectation that in any case of misfortune which may happen to the ship in which he has to sail to make gain, the property which he has left in his house will have to contribute to make compensation; if he has to make such compensation, it would be more worth while for him to remain at home. Still more for another reason, for the mariner has lost enough since he has lost his time, and will have worn and consumed his clothing, and will have wasted his bodily strength. Nevertheless if the gain, which the ship or vessel has made, will suffice to compensate the ship's apparel, which has been carried away, the managing owner of the ship or vessel, who shall have taken that compensation, ought to swear in the presence of all the company of the ship or vessel that he ought to recover it as soon as he can, and that he will use all his power so to do. And if he can recover it, he is bound to make good all which he has taken from the aforesaid mariners in compensation for that apparel, which those armed vessels have carried away, without any dispute. And if by chance there shall be in the ship or vessel any number of the mariners who shall object, that the apparel, which those armed vessels have carried away, ought not to be made good with the gain which the vessel has made, because it is a case of misfortune, they ought not and cannot do so. For if there should happen to the said mariners, whilst they are in the ship or vessel, a case of good

ab alguna caxa on hagues moneda, o alguna altra roba que valgues molts diners, o ab alguna bala, o ab alguna altra cosa que a ells tornas a profit; no y hauria algu qui no volgues haver be e entegrament la sua part que pertanyer li n'degues, e encara molt mes que pertanyer no li n'devria, si ell fer ho podia. E donchs ensemblant cas es justa rao, que axi, com quascu volria e demanaria be e entegrament sa part del guany, qui per cas de ventura los seria esdevengut, tot en axi es rao que quascu sia tengut de fer esmena a aquella perdua, que per cas de ventura los sera esdevenguda, del guany que ells fet hauran. E per les raons desusdits fon fet aquest capitol.

Capitol cciv. De roba qui s'banyara en leny descubert.

De mercaders [1] qui nolieiaran o metran roba en algun leny descubert, si aquella roba, que en aquell leny descubert sera mesa, se banyara e s'guastara per mar qui al leny entre o per aigua de pluia, lo senyor de aquell leny no sia tengut de esmena a fer neguna a aquells mercaders, de qui aquella roba sera, perco car no es sa culpa; que aytambe saben los mercaders com ell meteix, que aquell leny, on ells meten la lur roba, es descubert. Mas empero, si lo senyor del leny descubert es en algun loch qui li pogues fer tenda e que no fos tan mal temps que ell la pogues tenir feta, e no li n'fahia, si los mercaders provar lo y poran, ell es tengut de esmena a fer a aquells mercaders per aquella roba, que banyada o guastada sera per culpa d'ell, qui no volia tenir la tenda feta. Empero, si aquell senyor del leny sera en algun loch e fara tanta de mar e tant de vent que no la gosas tenir ne pogues, e plovia tant, que la tenda no hagues facultat de tenir la, si aquella roba se banya o se guasta, per aquestes raons que desus son dites lo senyor del leny no es tengut

[1] *De mercaders*] Esp. 124, chapter ccxi. commences here with the Rubric "De mercaders qui nolieja- | "ran o metran robes en algun leyn | "descubert."

fortune, that they should fall in with a chest in which there is coin, or some other goods which are worth much money, or with a bale or with any other thing, which will turn to their profit, there will not be one of them who would not wish to have fully and entirely his share which ought to belong to him, and likewise much more than what ought to belong to him, if he can do so. In such a case then there is just reason that as each would wish and claim fully and entirely his share of the gain, which shall devolve to him by a case of good fortune, so there is reason that each should be bound to contribute to compensate that loss which has by a case of bad fortune befallen them from the gain which they have made. And for the aforesaid reasons this chapter was made.

Chapter cciv. Of goods which shall become wetted in a vessel undecked.

Of merchants who shall freight or put goods on board an undecked vessel; if those goods which shall be put on board that undecked vessel are wetted or spoilt by the sea which washes into the vessel, or by rain water, the managing owner of the vessel is not bound to make any compensation to those merchants to whom the goods belong, because it is not his fault, for the merchants knew, just as well as himself, that the vessel in which they put their goods was undecked. But nevertheless if the managing owner of the undecked vessel is in a place that he can make a tent, and the weather is not so bad as to prevent him making a tent, and he does not make one, if the merchants can prove it, he is bound to make compensation to those merchants for the goods, which shall have been wetted and spoilt from his fault, as he did not wish to make a tent over them. Nevertheless, if that managing owner of the vessel shall be in any place, and there shall be so much sea and so much wind that he dare not and cannot keep the tent up, or it rains so much that the tent has not the power to keep it out, if those goods are wetted and spoilt, for the reasons above said, the managing owner of the vessel is not

de esmena a fer. Encara mes, si aquell leny fara aygua per murades, e per culpa d'aquella aygua que fara per murades aquella roba se banyara o s'guastara, lo senyor d'aquel leny es tengut de esmena a fer a aquells mercaders de qui la roba sera. E si lo leny no fara aygua per murades, e n'fara per lo pla, si aquell sera bo e suficientment be encrostamat; si per aquella aygua, que per lo pla fara, se banyara roba e s'guastara, pus lo leny sera be e suficientment encrostamat, lo senyor del leny no es tengut de fer esmena a aquells mercaders de qui aquella roba sera, que per aygua de pla sera banyada, pus que l'leny be e suficientment sera encrostamat. Empero, si lo senyor del leny prometra a algun mercader que li metra e li portara la sua roba sots bon talem, e lo senyor del leny no la y metra, ans la metra en altre loch, si aquella roba que l'senyor del leny haura promesa de portar sots lo talem, e no la y haura mesa ne portada, e aquella roba se banyara e s'guastara, lo senyor del leny es tengut de fer esmena a aquell mercader, de qui aquella roba sera, perco com ell no la haura mesa sots lo talem, axi com ell havia convengut a aquell mercader. E si lo senyor del leny la y hagues mesa, axi com promes li havia, e la roba se banyava e s'guastava, lo senyor del leny no li fora tengut de esmena a fer, pus ell haguera attes co que havia promes a aquell mercader, qui aquella roba li havia livrada per aquella promissio que feta havia. E axi, si roba se banyara e s'guastara sots lo talem, lo

bound to make compensation. Still more, if that vessel shall make water through her sides, and by fault of that water which she has made through her sides, the goods are wetted or spoilt, the managing owner of that vessel is bound to make compensation to those merchants to whom the goods belong. And if the vessel shall not make water through her sides, and shall make it through her floor, if that be well and sufficiently payed with pitch, and if by that water which she makes through her floor the goods are wetted and spoilt, inasmuch as the vessel was well and sufficiently payed [1] with pitch, the managing owner of the vessel is not bound to indemnify the merchants to whom the goods belong, which have been spoilt by the water of the floor, since the vessel was sufficiently payed with pitch. Nevertheless, if the managing owner of the vessel shall promise to any merchant that he will put on board and carry his goods under a good canopy, and the managing owner of the vessel shall not place them under it, on the contrary shall carry them in another place, if those goods which the managing owner of the vessel has promised to carry under the canopy, and has not placed or carried there, are wetted and spoilt, the managing owner is bound to make compensation to that merchant to whom the goods belong, because he has not placed them under the canopy as he had agreed with that merchant. And if the managing owner of the vessel has placed them as he promised to do, and the goods are wetted and spoilt, the managing owner of the vessel will not be bound to make him any compensation, as he will have done what he promised to that merchant, who delivered to him the goods on the faith of the promise which he had made. And accordingly if the goods shall be wetted and spoilt under that canopy the managing owner of the vessel

[1] *sufficiently payed*] The same principle is upheld in chapters xix., xx., xxi.

senyor del leny no li es tengut fer esmena, pus no es sa culpa. Per que guartse tot senyor de leny ja que prometra als mercaders, que mester es que los ho attena. E per aquesta rao fon fet aquest capitol.

Capitol ccv. De pilot.

Senyor[1] de nau o de leny qui nolieiara o sera nolieiat per anar en algunes parts, en les qualls ell ne hom que en la nau sia no s'certificara que ell hi sapia, e lo senyor de la nau o leny haura a logar pilot qui hi sapia, e aquell pilot se affermara, e dira al senyor de la nau o leny que ell sap e es cert en aquelles parts, on lo senyor de la nau volra anar. E si aquell pilot dira que no ha loch envers aquelles parts, on lo senyor de la nau volra anar o sera nolieiat, que ell tot no u sapia, e aquell pilot attendra al senyor de la nau o leny tot allo que promes li haura be e diligentment, lo senyor de la nau o leny li es tengut de donar tot lo loguer que entre ells sera empres sens tot contrast; encara li es tengut de donar mes que promes no li haura segons la bondat e valor que en aquel pilot sera, perco, car aquell pilot haura attes al senyor de la nau tot co que promes li haura. Empero totes les convinences que entre lo senyor de la nau o leny e aquell pilot seran empreses, deven esser totes meses en forma de cartolari de la nau o leny, perco que entre lo senyor de la nau o leny e aquell, qui pilot sera, no pogues haver algun contrast. E si per ventura aquell, qui pilot sera levat, no sabra en aquelles parts on ell dit e promes haura e convengut, aquell qui pilot sera mes, e qui aco al senyor de la nau o leny haura promes, e res no li pot attendre d'aco que promes haura, aquell

[1] *Senyor*] Esp. 124, chapter ccxii. here begins with the Rubric | " Senyor de nau o de leyn qui no- " liejara o sera noliejat."

is not bound to make compensation, since it is not his fault. Wherefore every managing owner of a vessel should beware what he shall promise to merchants, for it is necessary that he should keep his promise. And for this reason this chapter was made.

Chapter ccv. Of the pilot.

A managing owner of a ship or vessel who shall let or shall have let it for freight to go to any places, in which neither himself nor any one on board the ship can certify that he knows the navigation, will have to hire a pilot who knows the navigation, and that pilot shall affirm and say to the managing owner of the ship or vessel that he knows and is certain of his knowledge of those localities, in which the managing owner shall wish to go. And if that pilot shall say that there is no place amongst those parts, where the managing owner of the ship wishes to go, or shall have let his ship to go for freight, which he does not know thoroughly, and that pilot shall perform for the managing owner of the ship all that he has promised well and diligently, the managing owner of the ship or vessel is bound to pay all the wages which shall have been agreed upon between them without any dispute; further he is bound to give more than he has promised according to the good qualities and value which shall be in that pilot, because that pilot has performed for that managing owner of the ship all that he has promised. Nevertheless all the covenants, which have been made between the managing owner of the ship and that pilot, ought to be all formally entered in the register book of the ship or vessel, because there ought not to be any dispute between the managing owner of a ship or vessel and the person who shall be pilot. And if by chance that person who shall be taken as pilot does not know those parts, in which he has said and promised and agreed to pilot the ship or vessel, he who has been taken as pilot, and who has promised this to the managing owner of the ship or vessel, and cannot fulfil anything of what he has promised, in such case ought to lose imme-

qui aytal sera, deu perdre lo cap encontinent sens tot remey, e sens tota merce. E l'senyor de la nau o leny pot lo y fer tolre, que no es tengut que n'deman a la senyoria, si no s'vol, perco com aquell l'aura enganat e mes en juy de perdre si, e tots aquells que ab ell son, e encara la nau e tot l'haver. Empero, no sia tan solament en coneguda del senyor de la nau o leny, ja aquell pilot que sera levat, si deu perdre lo cap o no, ans deu esser en coneguda del notxer e dels mercaders e de tot lo cominal de la nau. E si tots aquells qui desus son dits, o la major partida, veuran e conexeran que aquell deia perdre lo cap, ell lo deu perdre; e si a ells no es semblant que l'deia perdre, que no l'perda; mas sie n'fet tot co que ells ne conexeran, que allo n'deu esset fet, e als no: perco car si per ventura a les vegades hom anava a la voluntat d'alguns senyors de naus o lenys, ells volrien be que alguns, de qui elles haguessen desgrat, que haguessen perdut lo cap, e perco que li n'romangues lo loguer que promes e darli deu; que axi be hi ha senyors de naus o de lenys qui son rasos de seny com un altre hom; e encara mes, que molts senyors de naus o lenys son, que no saben que deu anar davant, ne que detras,

diately his head,[1] without any remission and without any mercy. And the managing owner of the ship may cause his head to be cut off, and is not obliged to complain to the authorities of the place unless he chooses, because that pilot has deceived him, and has placed in peril of destruction the managing owner of the ship and those who depend upon him, and in addition the ship and all the goods on board. Nevertheless, it should not rest solely on the judgment of the managing owner of the ship or vessel, that he who shall have been taken as pilot ought to lose his head or not; on the contrary, it ought to rest on the judgment of the mate and the merchants, and all the ship's company. And if all the above mentioned or the greater part see fit and adjudge that he ought to lose his head, he ought to lose it; and if it does not seem fit to them that he should lose it, he ought not to lose it: but it should be done precisely as they shall adjudge, whether it ought to be so done or not; because, if by chance at times a man went as pilot at the discretion of any managing owners of ships or vessels, they might well wish that some, against whom they had a spite, should lose their heads, and in order that the wages which they had promised and ought to pay should remain in their hands, for there are managing owners of ships or vessels who are destitute of sense as well as other persons; and still more, there are many managing owners of ships or vessels who do not know when they should go forward and when backward, nor what the sea is and

[1] *his head*] A like punishment for an incompetent pilot was sanctioned in the 23rd article of the Rolls of Oleron as published by Garcia and Cleirac, but the earliest versions of the Rolls are silent on the subject. On the other hand, such a punishment is sanctioned by articles 33 and 34, immediately following the twenty-four articles of the Rolls in the Black Book of the Admiralty, vol. i., p. 128, and likewise by article 25 of the Castilian version of the Rolls. M. Pardessus, 11, p. 28, considers that the elaborate explanations and modifications, which this rule has undergone in the Consulate, is a strong argument in support of the opinion that the Consulate is of more modern date than the Rolls.

ne saben que s'vol dir la mar, ne que no. E perco seria mal fet que hom fos mort per assalt, o en coneguda tan solament del senyor de la nau o leny. Per que tot home que s'met per pilot, se deu guardar ans que s'y meta, que puga e sapia attendre tot co que prometra, perco que la pena, que desus es dita, no li pogues venir, ne altre dan.

Capitol ccvi. De guaytes de nau.

Tot senyor[1] de nau o de leny es tengut que encontinent que partex de alla on haura levat viatge e haura feta vela, ell deu partir[2] ses guaytes qui guaytен en la nau o leny, axi be anant ab veles com estant en port o en plaia o en sparagol, o axi be en terra de amichs, com de enemichs. E es axi, que aquells qui guaytен anant ab veles, si s'adormen a la guayta, de tot aquell jorn no deven bevre vi. E si aquells qui guaytaran en plaia o en port o en sparagol, e qui sia en terra de amichs, si a la guayta se adormiran, de tot aquell jorn no deven bevre vi ne haver algun companatge. E si, per ventura, sera en terra de enemichs, aquells qui a la guayta s'adormiran, si es mariner de proa deu perdre lo vi e lo companatge de tot aquell jorn, e encara que deu esser acotat tot nu per tota la nau, et deu esser surt en mar tres vegades ab la veta del morgonal, e aco sia en coneguda del senyor de la nau e del notxer, de darli qual si volra de aquelles dues penes que desus son dites; e si es de popa, deu perdre lo vi et tot lo companatge de tot aquell jorn, e deuli esser gitat un cau d'aygua per lo cap en avall. E si alguns d'aquests, qui son desus dits, seran trobats dorments a la guayta de tres vegades

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[1] *Tot senyor*] Esp. 124, chapter ccxiii. begins here with the Rubric "Tot senyor de nau o de leyn es "tengut que encontinent que "partex."

[2] *partir ses guaytes que guaytен*] departir les guaytes que sa guaytен, Esp. 124.

what it is not. And, therefore, it would be an evil that a man should be put to death at the caprice or the judgment only of the managing owner of the ship or vessel. Wherefore every man who holds himself forth as pilot ought to beware before he does so, that he can and knows how to perform all that he shall promise, in order that the punishment above stated may not devolve upon him, nor any other loss.

Chapter ccvi. Of the ship's watch.

Every managing owner of a ship or vessel is bound, immediately that he has departed from the place where he has commenced his voyage and has set sail, to divide the watches, who shall keep watch in the ship or vessel as well when she is going under sail as when she is in a port or in a roadstead or in harbour, and in the land of friends as well as of enemies; and so it is that if those, who keep watch when they are under sail, go to sleep on the watch, they ought not to have wine to drink during the whole day. And if he who keeps watch in a roadstead or in a port or in a harbour, and who is in the land of friends, shall go to sleep on his watch, he ought not to have any wine, nor any accompaniment [1] to eat with his bread. And if by chance he shall be in the land of enemies, he who shall sleep on his watch, if he is a mariner of the forecastle, ought to lose his wine and the accompaniments with his bread for a whole day, and further he ought to be beat naked by all the crew, and be plunged in the sea three times with a rope from the yard arm; and it should rest with the judgment of the managing owner of the ship and the mate to give him which he shall please of the two punishments above mentioned; and if he is a mariner of the poop, he ought to lose his wine and all his food except his bread, and he ought to have a pail of water thrown over his head downwards. And if any of those above mentioned shall be found sleeping on their

[1] *accompaniment*] This is explained in ch. c. to comprise cheese, onions, or sardines, or any other fish.

en sus, deven perdre tot lo loguer que haver devia de tot aquell viatge on seran; e si l'havien hagut, devenlo retre o deven esser gitats en mar; e sia en asalt del senyor de la nau e del cominal o de la major partida de darlos de aquestes dues penes qual ell se volran; perco car ells meten a juy e ventura de perdre si meteix e tots aquells qui en la nau o leny seran. E fon fet perco aquest capitol.

Capitol ccvii. De roba trobada.

Roba[1] que sera trobada en plaia o en port o en ribera, que vaia sobre aygua, o que la mar la hagues exaugada en terra, aquell qui trobara aquella en plaia o en port o en ribera, ab que la mar no la hagues exaugada en terra, ne deu haver la meytat de trobadures, en aquesta guisa que ell la deu presentar a la senyoria; e la senyoria deula tenir manifesta a tot hom un any e un dia. E si era roba que guastar se pogues, deu esser venuda, e lo preu que aquella roba se haura hagut, deu esser manifestat axi com desus es dit. E si passat aquell temps, de roba que axi sera trobada o del preu que de aquella se haura hagut senyor no haura vengut, la donchs la senyoria deu donar a aquell qui trobada la haura la meytat per ses trobadures, e de la meytat que romandra deu fer la senyoria dues parts, e potse n'pendre la una part, e l'altra que roman deu la donar per amor de Deu, la on a ell ben vist sera,

[1] *Roba*] Esp. 124, chapter ccxiv. here commences with the Rubric "Roba qui sera trobada en port o en plage o en ribera."

watch more than three times, they ought to lose all the wages which they ought to have for that voyage on which they are employed, and if they have had their wages they ought to repay them and be plunged into the sea;[1] and it should be at the discretion of the managing owner of the ship and the crew, or of the greater part, to inflict upon them which of these punishments they shall choose, because they have imperilled and exposed to risk themselves and all those on board the vessel. And for this reason this chapter was made.

Chapter ccvii. Of goods found.

If goods shall be found in a roadstead or in a port or on a beach, which are floating on the water or which the sea has cast up on the land, he who shall have found them in the roadstead or in the port or on the beach, provided the sea shall have cast them up, ought to have the half of the discovery, after this manner, that he ought to present them before the authorities of the place, and the magistrates should keep them for any person to inspect them for a year and a day. And if they be goods which may become spoilt, they ought to be sold, and the price which those goods will have fetched ought to be kept for any person to inspect for a year and a day. And if that time has been passed for the goods which shall have been found, or for the price which they shall have fetched, and no owner has arrived, thereupon the magistrates ought to give to him who has found them a moiety for his discovery, and of the moiety which shall remain the authorities of the place ought to make two divisions, and may take for themselves the one part, and the other which remains they ought to give away for the love of God in that quarter where it shall seem best

[1] *plunged into the sea*] M. Pardessus considers that "gitats en "mar" has the same meaning as "surt en mar." The corresponding phrases in the Gascon dialect appear to have been "qualez en la "mer" and "gitez en la mer." Costumes de la Commune d'Oleron, c. lxxv. vol. ii. p. 371.

per anima de aquell de qui estada será. E si, per ventura, aquella roba qui trobada sera, la mar la haura exaugada en terra, aquell qui la trobara, ne deu haber trobadures convinents, segons que a aquells bons homens d'aquell loch, on sera trobada, vist sera. Empero, deu esser fet d'aquesta qui sera axi trobada com es ja dit desus d'aquella altra, e axi fetes parts d'aco que a la senyoria romandra. Empero, si alguna roba sera trobada en golf o en mar delivra, aquella deu esser partida axi com en un capitol desusdit es ja contengut, perque ara no ho cal dir, ne recapitular; o si per ventura roba sera trobada que iaura a fons, aquella aytal que sobre aygua no ira, ne y poria anar, aquella no deu esser venuda ne alienada, perco com roba que iaura a fons, totavia espera son senyor, deven ne esser donades trobadures convinents a aquell qui la trobara a coneguda de la senyoria, e de dos bons homens de la mar, qui sien dignes de fe, e qui u sapien be e diligentment departir; e la senyoria deu tenir tota aquella roba manifesta, e lo preu d'aquella, si sera roba que s'pogues affollar. E si al temps de la usanca o de la costuma que l'senyor haura stablida en aquell loch, on aquella roba sera trobada, demanador o senyor no li haura vengut ne exit, la sobredita senyoria deu fer crida publica per trenta dies. E si senyor algu haura exit a aquella roba, que li sia livrada; si no, sia departida axi com desus es dit en aquell capitol meteix de roba que surara e ira sobre l'aygua, axi deu esser fet de aquesta meteixa pus que l'temps sera passat que l'senyor hi haura posat. Empero, es axi a entendre que

to them, for the soul of him to whom they belonged. And if by chance the sea shall have cast up on the land those goods which shall be found, he who shall find them ought to have a suitable reward for his discovery, according as it shall seem fit to the prud'hommes of that place where they shall be found. Nevertheless it ought to be done with the goods that shall be so found as already has been said above of other goods, and so likewise shall a division be made of what remains in the hands of the authorities of the place. Nevertheless if any goods shall be found in a gulf or on the open sea, they ought to be shared in the manner stated in a preceding chapter, which it is not necessary to state and recapitulate; or if by chance goods shall be found which lie at the bottom, of a kind which did not and could not float on the water, they ought not to be sold or alienated, because as goods lying at the bottom they always awaited their owner: there ought, however, to be given a suitable recompense to him who shall have found them, upon the award of the authorities of the place and of two prud' hommes of the sea who shall be worthy of trust, and who know well and diligently to decide; and the authorities of the place ought to keep those goods open to inspection, or the price of them if they are perishable goods. And if at the time of the usage or custom which the authorities have fixed at the place where the goods have been found, a claimant or owner shall not have come forward or appeared, the above-mentioned authorities ought to make a public proclamation during thirty days. And if any owner of those goods has come forward they should be delivered to him; if not, let them be divided as stated above in the said chapter[1] concerning goods which swim or float upon water, and it ought to be so done with those same goods when the time shall be passed which the authorities have fixed. Neverthe-

[1] *the said chapter*] The chapter here referred to is probably chapter cxv.

aquell o aquells qui la desusdita roba trobaran, e la hauran trobada, que la deven haver manifestada a la senyoria del loch, on la dita roba sera trobada, dins tres dies, si en loch ne seran e dit a la senyoria. E si dins tres dies no la han presentada, deven ho fer dins sis dies, e si dins los sis dies no la poran haver presentada a la senyoria, deu fer en axi per malicia a sobrar e per dans e per greuges e per messions esquivar a aquell o aquells qui la dita roba hauran trobada, que la haien manifestada e presentada dins deu dies. E si dins los deu dies no la hauran manifestada, ne y sera aquell de qui la roba sera, la senyoria per ell deman, e pusca demanar la dita roba, que axi com desus es dit sera estada trobada, a aquell o aquells qui trobada la hauran per ladronici, e estar a merce de la senyoria: e encara, que deven perdre tot lo dret que la dita roba devien haver per rao de les dites trobadures. Salvo empero, que si aquell o aquells que la dita hauran trobada, axi com desus es dit, e dins los deu dies no la hauran presentada a la dita senyoria segons desus es dit, si ells justs casos o justes raons amostrar poran, per que ells la dita roba no haguessen poguda presentar o manifestar a la dita senyoria dins los deu dies, devenlos esser rebudes; en axi empero, que si los casos e les raons desus dites e posades ells en ver metre les poran; si no, que la senyoria pusca enantar contra ells segons que desus es dit en la forma dita desus. Empero, si la dita roba que sera stada trobada, sera stada perduda un any haura e un dia, e passat l'any e lo dia la dita roba sera stada trobada, aquell, de qui era la dita roba, no n'pot res demanar, ans deu esser d'aquell o aquells qui la hauran trobada, e aquell de qui era la roba no n'pot res demanar. E

less it is to be understood that he or they who shall find or have found the goods, ought to exhibit them to the authorities of the place where the said goods have been found, within three days, if they be in a place where the authorities are accessible. And if they cannot be exhibited within three days, they ought to be exhibited within six days, and if they have not been able to exhibit them to the authorities within six days, they ought, in order to avoid charges of bad faith, and to escape losses and prejudices and outgoings, to require him who has found the said goods that they shall be exhibited and presented within ten days. And if they have not been exhibited within ten days, and he to whom they belong shall not be there, the authorities of the place should and may claim the said goods that shall have been found as above said from those who shall have found them, as if they were robbers, and they shall be at the mercy of the authorities, and further they ought to lose all the right which they ought to have had by reason of the discovery of the goods. Saving nevertheless, that if he or they who have found them, as above said, and have not exhibited them to the authorities of the place within the ten days as above directed, can show just causes and just reasons why they have not been able to exhibit and present the said goods to the said authorities of the place within the ten days, they ought to be excused; provided, however, that they can establish the truth of the causes and reasons above said and explained; if not, the authorities may proceed against them, according to what has been said above in the manner above said. Nevertheless if the said goods, that shall be found, shall have been lost within a year and a day, and shall have been found after the year and a day has expired, he to whom the goods belonged cannot claim them; on the contrary they ought to belong to him or them who have found them, and he to whom the goods belonged cannot claim anything. And the reason

es rao car no es roba al mon qui haia stat un any sots aygua, o pres de aygua, o sobre aygua per lo dit temps, que aquell, de qui stada sera, pogues justament coneixer algun senyal, perque pogues dir que la dita roba fos stada sua, si donchs no u fahia per arbitre, salvo ferro o acer o altre metall; e axi la dita roba, que axi com desus es dit sera trobada, deu esser de aquell qui trobada la haura. Empero, si aquell qui la dita roba esser sua dira, fara fe que sua es e sua fo, deuli esser delivrada, ell empero faent satisfaccio a aquell qui trobada la haura a sa voluntat, si aquell, qui trobada la haura, fer ho volra, que en altra manera senyoria no l'ne deu destrenyer, si donchs aquell qui la dita roba demanara, provar o en ver metre no pora per testimonis dignes de fe la dita roba esser sua. E si axi com desus es dit en ver metre pora la dita roba esser sua, e de tot en tot la dita roba ell cobrar volra: ell es tengut de donar e de pagar a aquell, qui trobada la haura, tots dans e tots destrichs e interessos, que en ver metre pora, que per culpa de la roba desusdita li seran esdevenguts e haguts de haura a sostenir, a coneguda de la dita senyoria e de dos bons homens, qui sien dignes de fe. E si de la dita roba, que trobada sera, aquell o aquells, qui trobada la hauran, se n'serviran o guanyaran e n'afran algun guany, si los dits qui la dita roba hauran trobada se n'seran servits o n'hauran fet algun guany, si ells demanaran les dites trobadures, deven los esser donades segons que es costumat, e lo dit guany o servey que de la dita roba hauran hagut o fet, deu los esser mes en compte de les dites trobadures. E per les raons desusdites fo fet aquest capitol.

Capitol ccviii. De convinenca

Si alguna[1] convinenca o promissio o obligacio sera feta de uns a altres en golf o en mar delivra o en altre loch de mar, salvo que la nau o leny no sia en

[1] *Si alguna*] Esp. 124, chapter ccxv. begins here with the Rubric "Si alguna convinensa o promissio o obligacio sera feta de diners."

is because there are no goods in the world which have remained a year under water, or near water, or upon water, which he to whom they belonged can recognise by any mark, so as to be able to say that the goods are his own, unless he has them examined by experts, with the exception of iron or steel or other metal, and accordingly the said goods, which have been found as above said, ought to belong to him who has found them. Nevertheless if he who shall say that the goods are his property, shall pledge his faith that they are and were his property, they ought to be delivered to him, provided he makes satisfaction to him who has found them according to his choice, if he who has found them shall be willing to agree; for otherwise the authorities of the place ought not to constrain him, unless he who shall claim the said goods can prove and establish for truth by witnesses worthy of credit that the said goods are his property. And if, as above said, he can establish for truth that the goods are his property, and he wishes to recover the goods out and out, he is bound to give and to pay to him who shall have found them for all losses and all prejudices and interests which he can verify, that by fault of the said goods they had happened to him, and he has had to sustain them, upon the award of the said authorities of the place, and of two prud'hommes who are men of trust. And if those who have found the goods have employed them, and have derived any gain from them, and if those who shall have so found them and have made some gain from them demand the said recompense for their discovery of them, it ought to be paid to them according to custom, and the gain or service which they have made with the said goods ought to be set to the account of the recompense. And for the reasons above said this chapter was made.

Chapter ccviii. Of an agreement

If any agreement or promise or obligation shall be made by one party to another in a gulf or on the open sea, or in any other part of the sea, unless the ship or vessel

feta en golf o en mar delivra.

loch que tenga prois o rayaire en terra, per qualsevol rao que sera feta convinenca o promissio, no deu haver valor, perque a les vegades van en naus o lenys mercaders o homens honrats, e molts d'altres a qui fa mal la mar o han algun greuge en si metexs, e si ells podien exir en terra, on poguessen esser aleviats d'aquells greuges o de aquell envig que ells en si metexs han, si ells havien mil marchs de argent, tots mil los prometrien a algu qui l's demanas e que l's posas en terra. Per aquesta rao no deu haber valor hoc. Encara mes, si per ventura, se encontraran ab alguns lenys armats, si per promissio o per convinenca, o per obligacio que ells los faessen, se podien tolre d'aquells lenys, els farien convinenca o promissio, perco que ells no l's faessen mal, de mes que per ventura no l's porien attendre per la paor que haurien d'ells; e per esta rao promissio ne convinenca feta per paor o per forca no val ne deu valer per neguna rao. Mas empero, si nau o leny tendra prois o rayaire en terra, tota convinenca, que sera feta de uns a altres en qualsevulla guisa que sia feta, val e deu valer. Empero, si la nau o leny sera en golf o en mar delivra, o en qualche altre loch se vulla sia de mar, e que tenga prois en terra o no, e aquells, qui en la nau seran, faran alguna convinenca o promissio, deu haver valor per estes quatre raons, co es a saber: per fet de git, o si per fortuna de mal temps o per que altre cas o ventura sia, que la nau o leny ne vaia en terra, o per qualche convinenca que mercaders facen de fer esmena a nau o leny per alguna rao, o per viatge a cambiar, e que l'escriva sia present, e tantost com la nau o leny tendra prois en terra, que encontinent ho pense de

is in a place where she is moored by a cable or hawser ashore,[1] for whatever reason the agreement or promise shall have been made, it ought not to be held valid, because at times merchants or honest men and many others, whom the sea makes sick or who have some painful ailment of their bodies, go on board of ships, and if they had a thousand marks of silver they would promise it all to anyone who would ask it and put them ashore. For this reason it ought not to be held valid. Still more, if by chance they should meet with some armed vessels, if by promises or by agreements, or by obligations which they should undertake, they could escape from those vessels, they would make an agreement or promise in order that they should do them no harm, the more so as by chance they could not attend to what they were doing from the fear which they had of them, and for this reason promises or agreements made under fear or compulsion are not valid, nor ought to be valid on any account. But nevertheless, if a ship or vessel shall be anchored or moored to the shore, every agreement which shall be made by one party to another, in whatever form it shall be made, is valid and ought to be valid. Nevertheless, if the ship or vessel shall be in a gulf or on the open sea or in any other part whatsoever of the sea, and whether she is anchored to the shore or not, and those who are in the vessel make any agreement or promise, it ought to be valid in these four cases, that is to say, in case of jetison; or if by accident of bad weather, or from whatever other cause or accident, the ship or vessel goes ashore; or if the merchants make an agreement to make compensation to the ship or vessel for any reason; or if they make an agreement to change the voyage and the ship's clerk is present, and as soon as the ship or vessel is moored to the shore immediately takes care to enter it

made in a gulf or on the open sea.

[1] *hawser ashore*] Certain exceptional cases are provided for in chapters l., liv., lvi., lxvi., and also in chap. ccxlvii.

escrivre en lo cartolari. E per aquestes raons desusdites neguna convinenca feta en golf o en mar delivra o en qualsevulla altre loch sia, no deu haver valor, salvo per les quatre raons que ja son en aquest capitol desus declarades e certificades. Empero si la nau o leny sera en fou o en stany, tota convinenca que aquells faran, qui seran en la nau o leny, deu esser tenguda per ferma, tenga prois en terra o no: perco com qui es en stany o en fou, aytant val com si era en terra, que assats es en terra, pus que mal temps no l'ne pot gitar, ne li pot algun dan fer.

Capitol ccix. De convinences entre patro e mercaders e mariners.

Qualque[1] convinenca que senyor de nau o leny fara o haura feta a mercaders o a sos mariners o ab alguns que sien o seran tenguts de sa nau o leny, aquella es mester que l's attena, sens algun contrast. E si, per ventura, lo dit senyor de la nau o leny la dita convinenca o promissio attendre no l's volra, ell los es tengut de restituir tot dan, que l's desusdits ne sostendran o n'hauran sostengut o n'esperan a sostenir, sens tot contrast, si la dita nau o leny ne sabia esser venuda: salvo empero tot empediment, que per justa rao venir y pogues o y fos esdevengut, per lo qual lo dit senyor de la nau o leny no hagues attes o no hagues pogut attendre la dita convinenca o promissio a tots los desusdits. E per semblant los dits mercaders e mariners e tots aquells qui de la dita nau o leny seran tenguts, son tenguts e obligats de attendre al dit senyor de la nau o leny tota convinenca o promissio que ab ells haien empresa, sens tot contrast. E si, per ventura, la dita convinenca o promissio attendre no li volran, si los dits han alguns bens, deven esser venuts per restituir lo dan per la dita convinenca o promissio sostengut o a sostenir, sens tot diffugi. E

[1] *Qualque*] Esp. 124, chapter ccxvi. commences here with the Rubric "Qualque convinensa senyor de nau o de leyn fara o aura feta."

in the ship's register. And for the reasons above said no agreement made in a gulf or on the open sea, or in whatsoever place it may be, ought to have validity except for one of the four reasons which have been declared and certified in this chapter. Nevertheless, if the ship or vessel shall be in a dock or harbour, every agreement which those who are on board the ship or vessel shall make ought to be held valid, whether she be moored to the shore or not, because whoever is in a harbour or dock is in a condition equivalent to being on land, for he is sufficiently on land, since bad weather cannot affect him nor cause him any harm.

Chapter ccix. Of agreements between a managing owner and merchants and mariners.

Every agreement which a managing owner of a ship or vessel shall make or have made with merchants or with his mariners, or with others who are connected with the ship or vessel, it is incumbent that he observe it without any dispute. And if by chance the said managing owner of the ship or vessel shall not be willing to observe that agreement or promise, he is bound to make good all the loss which the above-mentioned parties shall sustain, or shall have sustained, or expect to sustain, without any dispute, even if the said ship or vessel shall have to be sold: saving nevertheless every impediment, which for just reasons may arise or may have supervened, by reason of which the said managing owner of the ship or vessel has not observed and had not the power to observe the said agreement or promise to all the above-mentioned parties. And in a similar way, the said merchants and mariners and all those who are connected with the said ship are bound and obliged to observe towards the said managing owner of the ship or vessel every agreement or promise which has been made by them without any dispute. And if by chance they should not be willing to observe the said agreement or promise, if they have any effects, they ought to be sold to make good the loss sustained or likely to be sustained in consequence of the said agreement or promise without any delay. And if

si los dits lurs bens al dit dan, per la dita convinenca o promissio sostengut o a sostenir, a restituir no bastaran; si lo dits son aconseguits, deven esser presos e mesos en poder de la senyoria, e star tant e tant longament en la dita preso, tro que haien entegrat al dit senyor de la nau tot lo dan desus dit, o que se n'sien avenguts ab lo dit senyor de la nau o leny a la sua voluntat: salvo empero, que l'desusdit empediment no l's ho hagues tolt e vedat que ells no haguessen pogut attendre la dita convinenca o promissio al dit senyor de la nau o per culpa d'ells no fos romas, que ells no haien o no haguessen attesa la dita convinenca o promissio, segons que desus es dit. E per les raons desusdites fon fet aquest capitol.

Capitol ccx. De comanda feta a us de mar.

Si algu [1] comanara a altre roba (la roba es entendre mercaderia) amigablement ab carta o menys de carta e sens convinenca alguna, que no sera empresa entre ells, sino tan solament que aquell qui la comanda reb, que la reb a us e costum de mar e a risch de mar e de males gents, e ell que la deu vendre en qualche loch que ell fara port ab la dita mercaderia en aquell present viatge, en lo qual ell haura rebuda la comanda, e vendra tot axi com mils pora, e segons que entre ells sera empres. Mas empero, si entre ells no sera empres, aquell qui la comanda portara, que deu haver

[1] *Si algu*] Esp. 124, chapter ccxvii. here begins with the Rubric "Si algu comenara a altra roba, roba es entendre mercaderia."

the said effects shall not be sufficient to make good the said loss sustained or about to be sustained through that agreement or promise, if the said parties are sued, they ought to be seized and placed in the custody of the local authorities, and remain so long in prison until they have fully paid to the said managing owner of the ship all the abovesaid loss, or they have made an arrangement with the managing owner of the ship or vessel at his discretion: saving nevertheless that the aforesaid impediment has not prevented and forbidden them to observe the said promise or agreement with the managing owner of the ship, or it has not resulted from their fault, that they did not and could not perform the said agreement or promise according as above explained. And for the reasons above stated this chapter was made.

Chapter ccx. Of commissions executed according to the usage of the sea.

If anyone commits to another goods (by goods merchandise is meant), as to a friend, with a writing or without a writing, and without any contract having been made between them, excepting only that he who has received the commission receive it according to the use and custom of the sea,[1] and at the risk of the sea and of pirates he ought to sell it in whatever place the ship shall go into port with the said merchandise on the present voyage, in which he has received the commission, and shall come back as soon as he best can, and according as it shall be agreed between them. But nevertheless, if there has been no agreement between them, as to what he who shall carry the commission ought to have

[1] *custom of the sea*] This species of maritime mandate seems to have grown up with the decay of the Roman system of rich patricians appointing one of their slaves or freedmen, as their factor or supercargo, to manage the sale of goods dispatched in their vessels to foreign ports. The Roman contract of mandatum was in strict law gratuitous, so that the mandatary had no perfect right to any compensation, but the Roman law permitted an honorarium to be promised in testimony of the gratitude of the mandans.

per son maltret, ni que no; si entre ells empres no sera, aquell, qui la comanda se n'haura portada, no se n'deu res retenir, pus que entre ell empres no sera, ans es tengut de donar e de retre tot co que de la roba haura hagut, encontinent que tornat sera de aquell viatge, per lo qual ell se n'haura portada la dita comanda. Empero aquell, de qui la comanda sera, es tengut de donar al comandatari, qui la sua comanda haura portada o arribada, per lo seu maltret, segons que guanyara, e segons lo maltret que aquell hi haura hagut. E aco deu esser en son cosiment e a sa coneguda, e lo comandatari no l'pot d'als destrenyer. Per que tot comandatari se guart e s'deu guardar, com reb comanda de algu, e ja com fara ses fahenes e com no, perco que no haia a venir en cosiment, ne en coneguda de aquells qui les comandes li faran, per rao del seu maltret. E a aquesta rao que desus es dita de roba, a aquesta metexa son e deven esser aquells, qui prenen comanda de diners.

Capitol ccxi. De patro, qui vendra la nau sens sabuda dels personers.

Si algun[1] senyor de nau o leny vendra lo sua nau o leny sens voluntat e sens sabuda dels personers, ell es tengut encontinent que ell venuda la haura, de tornar e retre compte a sos personers, e de retre e donar tot co que a quascu vendra per la sua part, si ells pendre ho volran. E si los personers pendre no u volran, ell los es tengut de retre e de tornar en lur poder aquella nau o aquell leny, que ell venut haura sens voluntat o sens sabuda d'ells. E si aquella nau o leny no l's pot tornar en poder, ell los es tengut de retre e de tornar aytan boná nau o aytan bon leny com

[1] *Si algun*] Esp. 124, chapter ccxvin. here begins with the Rubric | " Si aleun senyor de nau o de leyn " vendra la sua nau o l' seu leyn."

for his trouble, and what not, if there has been no such agreement between them, he who shall have carried the commission ought not to retain anything for himself since there has been no agreement between them ; on the contrary he is bound to give up and render all that he has received for the goods committed to him immediately that he shall have returned from the voyage for which he has carried the said commission. Nevertheless he to whom the commission belongs is bound to pay to the commissioner who has carried and conveyed it to its destination for his trouble in proportion to the profit made upon it and the trouble which he has had. And this ought to be regulated by his discretion and judgment, and the commissioner cannot constrain him. Wherefore every commissioner should beware and ought to guard himself how he accepts a commission from any one and how he busies himself with it, and how not, in order not to be at the mercy and discertion of him who has entrusted to him the commission for the reward of his trouble. And by this rule as above stated applying to goods, those also who are entrusted with money on commission ought to be governed.[1]

Chapter ccxi. Of the managing owner who sells his ship without the knowledge of the part-owners.

If any managing owner of a ship or vessel shall sell his ship or vessel without the consent and without the knowledge of the part-owners, he is bound, immediately that he has sold it, to return and render an account to the part-owners, and to render and pay all that which shall accrue to each as his share, if they shall wish to receive it. And if the part-owners shall not wish to receive it, he is bound to render and to return to their hands that ship or that vessel which he shall have sold without their consent or knowledge. And if that ship or vessel cannot be restored to their hands, he is bound to render and restore to them an equally good ship or an

[1] *governed*] The subject of commissions of money is discussed chapter clxxii.

aquell era, e lo guany que fet poguera haver ab aquell leny, o se n'haura avenir ab ells, axi com mils pusca. E si entre ells no se n'poran avenir, duen hi metre dos bons homens qui sien dignes de fé, e aquells que l's ho departesquen ; e qualsevol cosa que aquells ne diran e conexeran, allo n'deu esser seguit. Empero, si com lo senyor de la nau o leny haura feta la venda, axi com desus es dit, a la major forca dels personers plaura aquella venda ; lo senyor de la nau o leny, qui venut sera, no l's es de res als tengut, sino de donar los co que a quascu pertanyera, pus la major forca dels personers s'y accordaran. E si, per ventura, lo senyor de la nau o leny, que venut sera, no vendra ne tornara a retre compte a sos personers, ne encara per donar sa part a quascu d'aco que de la venda de la nau o leny los pertanyera, e ell se n'ira deves altres parts ; si ell es aconseguit, ell es tengut de retre e donar a aquells personers tot co que de la venda de la nau o leny los pertanyera, e encara tot aytant com los personers diran per lur sagrament, que aquella nau o aquell leny poguera haver guanyat. E si ell no ha de que l's puxa satisfer ne entregar, deu esser pres e mes en poder de la senyoria e star tant pres, tro que haia satisfet a aquells seus personers d'aquella demanda que ells li fan, o que se n'sia avengut ab ells. E si, per ventura, aquell qui la nau haura venuda, no sera trobat, e los personers trobaran aquella nau o leny que l's sera stat levat, ells lo s'poden pendre e demanar ab la senyoria, e la senyoria deula l's delivrar, ells empero demonstrant que lur fos per testimonis o per cartes ; si donchs aquell qui comprat l'haura no podia mostra carta, que aquell, qui la dita nau li haura venuda o leny, hagues dels

equally good vessel as that was, and the gain which he might have made with that vessel, or he must arrange with them as best he may. And if they cannot agree, they ought to submit to it two prud'hommes who shall be trustworthy, and they shall decide, and whatever thing they shall say and adjudge ought to be observed. Nevertheless, if, when the managing of the ship or vessel shall have made the sale in the manner above said, the sale shall please the majority of the part-owners, the managing owner of the ship or vessel which shall have been sold is not bound to anything else than to give them what belongs to each, since the greater part of the part-owners have assented to it. And if by chance the managing owner of the ship or vessel which shall be sold shall not come and return to render an account to the part-owners, nor further, to give to each his share of that which shall belong to them from the sale of the ship, and he shall go away to other countries, if he is sued, he is bound to render and give to those part-owners all that which shall belong to them from the sale of the ship or vessel, and still more, all that the part-owners shall declare upon their oath that that ship or that vessel might have gained. And if he shall not have wherewithal to be able to satisfy and indemnify them, he ought to be seized and committed to the custody of the local authorities, and remain in prison until he has satisfied those part-owners for the demand which they have made, or shall have made an arrangement with them. And if by chance he who has sold the ship shall not be found, and the part-owners shall discover the ship or vessel which has been taken from them, they may seize it and claim it from the local authorities, and the authorities ought to deliver it into their possession, upon their proving by witnesses or writings that it was theirs, and provided that he who has bought the said ship or vessel cannot show any writing that he who has sold him the said ship or vessel had authority from

personers loch que la pogues vendre e fera sa voluntat; per que quascu se guart e s'deu guardar, com comprara nau o leny e com no, perco que dan algu no li n'pusca venir. Empero, si ell la vendra per vellesa que la nau o leny hagues, o emprestadors la faran vendre per prestech que aquells hi haguessen fet a ops de coses que fossen necessaries a l'nau o leny, aquell qui senyor ne sera no sia tengut sino en axi, com en lo capitol que parla de fet de adob de nau o leny es ja dit e certificat.

Capitol ccxii. De roba amagadament mesa en nau.

Si algun[1] mercader o mercaders nolieiaran a algun senyor de nau o leny bales o farcells o qualsevol altra cosa, e los mercaders metran o faran metre en aquells faixs, bales, farcells, o caxes, o altra roba que sia, en mitgs del un d'aquells o de tots, alguna cosa amagadament, axi com es or, argent, moneda, perles, ceda, o altra roba nobla o mercaderia que ells se volran, e allo que dins aquella faixs, bala, o farcell, caxa, o qualque altra roba se sia que ells amagadament dins aquells faixs hauran mesa; que no u diran, ne ho demostraran, com nolieiaran, al senyor de la nau o al notxer o al guardia o al escriva d'aquella nau, en que ells ho metran; sia que la nau o leny haura a gitar o li vendra cas de ventura, que n'ira en terra e s'rompra; si aquell faix o bala o farcell o caxa o altra roba, en que allo que desus es dit sera, se gitara, en fet d'aquell git qui fet sera, no y deu esser comptat, sino tan solament aquella roba, que ell haura nolieiada per testimonis que n'donas que diguessen que ells la y havien vista metre, pusque

[1] *Si algun*] Esp. 124, chapter ccxix. here begins with the Rubric "Si alcuns mercaders noliejaran alcuns senyors de naus o de leyns."

the part-owners to sell or do with it as he pleased; wherefore every person ought to beware and to be on his guard how he shall buy a ship or vessel, and how not, in order not to incur any loss. Nevertheless, if he shall sell the ship or vessel because of its old age, or creditors shall force him to sell it to repay a loan which they have made to him from want of things necessary for the ship or vessel, he who is the managing owner of it is not bound further that is said and certified in the chapter[1] which speaks of the fact of repairing a ship or vessel.

Chapter ccxii. Of goods secretly placed on board of a ship.

If any merchant or merchants contract with any managing owner of a ship or vessel to load upon freight certain bales or bundles, or some other certain articles, and the merchants shall place or cause to be placed in those packages, bales, bundles, or chests, or whatever the goods may be, in the midst of one or all of them anything secretly, such, for instance, as gold, silver, coin, pearls, silk, or other precious goods or merchandise, whatever they may choose, and what may be within those packages, bales, bundles, chests, or other goods, which they have inserted secretly in them, they shall not have told or shown when they loaded the ship to the managing owner, or to the mate, or to the watch, or to the ship's clerk of that ship in which they have placed them; if it happen that the ship or vessel has to cast overboard cargo, or a case of misfortune should befall to her, so that she goes on shore and is wrecked, if that package, or bale, or bundle, or chest, or other goods, in which the thing above mentioned may be, should be cast overboard, there shall not be reckoned in the matter of the jetison which has been made anything except only the merchandise which they have loaded in the presence of witnesses who can say that they saw it put on board, since the other articles have not been mentioned to the

[1] *the chpter*] Chapter cc. is probably here referred to.

al senyor o al notxer o al guardia o al scriva no u hauran mostrat ne dit, ne en lo cartolari no sera scrit. E si la nau o leny ne va en terra e aquella roba se perdra, no li deu esser feta esmena, sino perco que ell haura fet entenent com ell la nolieia, ja quina roba era e quina no. E si per ventura aquella bala o faix, on algunes coses seran meses amagadament axi com desus es dit, no s'perdra ne si gitara, e en aquella bala o faix sera trobat allo que desus es dit que amagadament y sera mes, deu metre per tot co que valra en aquell git o naufrag que sera fet. Encara mes, si aquella roba o mercaderia, que desus es dita, se perdra per culpa del senyor de la nau o del scriva, no sien tenguts de esmena a aquell de qui sera, sino tan solament, perco que ell los haura fet entenent com la l's nolieia; perco, car a les vegades hi ha alguns mercaders, que si hom los crehia de tot co que ells dirien o farien sagrament, si perdien algun faix per algunes de les raons desus-dites, dirien que en aquell faix havien ells mes valent mil marchs d'aur o d'argent. E per esta rao no li es algu tengut sino d'aco, que al nolieiar fa entenent a algu d'aquells que desus son dits. Per que tot mercader se quart e s'deu guardar, com nolieia la sua roba a algu, que li u faca tot entenent, perco que no li pogues tornar a dan, axi com desus es dit.

managing owner, nor to the mate, nor to the watch, nor to the ship's clerk, and they have not been entered in the ship's register book. And if the ship or vessel goes ashore, and those things shall be lost, no compensation ought to be made, unless the merchants shall have made it understood, when they put them on board, what they really put on board and what not. And if by chance those bales or packages in which any article shall be put on board secretly, as above stated, shall not be lost nor cast overboard, and there shall be discovered within those bales or packages that which, as above said, has been secretly put on board, it shall all be valued to contribute to the jetison which shall be made, or to the shipwreck which shall happen. Still more, if those goods or merchandise above mentioned shall be lost by the fault of the managing owner of the ship, or of the ship's clerk, they are not liable to make any compensation to him to whom they belong, except so much as he shall have made it understood when he put the goods on board, because at times there are certain merchants who, if a man were to believe all that they say or make oath to, in case that any package were lost by any of the above causes, would say that in that package they had put valuables that were worth a thousand marks of gold or silver; and for that reason no one is responsible to a merchant except for that which at the loading of it he shall have declared to one of the parties above enumerated. Wherefore every merchant must beware and be on his guard, when he shall load his goods in any vessel, that he make known to one of the parties above enumerated everything which he has put on board, in order that it may not result in loss to himself, as above explained.[1]

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[1] *explained*] The penalties on the clandestine shipment of goods has been elsewhere discussed in chapters lv., lxix., lxx., lxxi. and cxlii.

Capitol ccxiii. Si algun patro donara son loch a altre per nolieiar.

Si algun[1] senyor de nau o leny dara son loch a algun hom, que ell pusca nolieiar aquella sua nau o leny de tot o de partida, e entre lo senyor de la nau e aquell a qui haura donat son loch de nolieiar, sera empres dia cert o temps sabut, si dins aquell temps sabut aquell nolieiara segons que entre ell e l'senyor de la nau sera empres, val aquell nolit que aquell, qui lo senyor de la nau ni haura mes per nolieiador, haura fet ab algun mercader o mercaders, e deu haver valor tot aytant, com si ell era senyor de la nau o leny; que senyor n'es, pusque aquell hi haura donat son loch. Quant a aquell nolieiament que aquell, que haura loch de nolieiar dins aquell temps cert, que ab lo senyor de la nau haura empres, fara; si que n'haia avol nolit o bo, deu haver valor. E si lo senyor de la nau o leny nolieiara dins aquell temps sabut, que ell haura donat son loch a algu que pusca nolieiar de tot o de quantitat sabuda, tanta de roba que ell no pusca levar aquella, que aquell hom haura nolieiada per fe d'ell e per son manament, lo senyor de la nau es tengut que jaquesca aquella que ell haura nolieiada dins aquell temps empres ab aquell, a qui ell haura donat son loch de nolieiar, o que s'avenga ab los mercaders, de qui la roba sera, que mester es que aquell, que ell haura mes per nolieiador, ne sia guardat de dan, si la nau ne sabia esser venuda. Encara mes, si lo senyor de la nau o leny dara son loch a algun de nolieiar, e lo dit senyor de la nau o leny no li dara dia cert ne temps sabut; si

[1] *Si algun*] Esp. 124, chapter ccxx. begins here with the Rubric "Si algun senyor de nau o de leyn dara son loch a alcun."

Chapter ccxiii. If any managing owner gives authority to another to let his vessel for freight.

If any managing of a ship or vessel shall give authority to anyone that he may let his ship or vessel for freight, in whole or in part, and between the managing owner of the ship and him to whom he has given his authority to let it for freight, there shall be an agreement for a certain day and for a given period, if within that given period the person to whom he has given authority shall let the ship for freight according to the terms of the agreement between himself and the managing owner, that letting which the person to whom the managing owner has given authority to let the vessel shall have agreed to with any merchant or merchants is valid, and ought to take effect precisely as if he was the managing owner, for he is in effect the managing owner, since he has authority from him to act as such. With regard to the letting of the ship, which he who has authority to let it during a certain period, according to his agreement with the managing owner, has concluded, whether it be a bad or good letting, it ought to take effect. And if the managing owner of the ship or vessel during that given time during which he has given authority to anyone that he may let his ship for freight, either the whole or for a given quantity of goods, shall himself let the ship to carry so much goods that it cannot carry those goods which that person has accepted on freight in reliance upon him and by his authority, the managing owner of the ship is bound to leave behind the goods which he has agreed to take on freight during the time agreed upon, with him to whom he transferred his authority to let the ship on freight, and he must arrange with the merchants to whom the goods belong, for it is incumbent that he whom he has authorised to let the ship on freight be protected from all loss, even if the ship has to be sold. Still more, if the managing owner of the ship or vessel shall give authority to another person to let the ship on freight, and the said managing owner shall not have fixed a certain day or a given time, if the managing owner of the

lo senyor de la nau o leny nolieiara abans que no haia haguda fadiga o misatge cert d'aquell qu'ell haura jaquit per nolieiador, tot en axi n'es tengut com ja es desus dit e esclarit. Empero, si lo senyor de la nau o leny trametra a dir a quell, qui ell haura jaquit en algun loch per nolieiador, que ell no nolieg alguna cosa; si aquell no havia res nolieiat, com lo senyor de la nau lo y trames a dir, ell no deu pus noliciar. E si u fa, lo senyor de la nau o leny no li es tengut de dan que li n'esdevenga, ne encara no es de res tengut a aquells mercaders, qui ab aquell se nolieiaran, pus que ell li haura trames a dir, que ell no nolieg; perco, car algu no ha poder en co d'altre, sino aytant com aquell de qui es li n'vol donar. Empero, si aquell haura res nolieiat, abans que sabes l'ardit del senyor de la nau, deu haver valor, axi com desus es dit. Empero lo senyor de la nau o leny do deu nolieiar de tot fermament, pus haura donat son loch a altre de nolieiar, tro fins que sapia certenitat d'aquell que ell haura fet nolieiador, e ja que ha nolieiat e que no, perco que l'dan que desus es dit no li pusca esdevenir.

Capitol ccxiv. De patro qui tirara raig trobat, sens voluntat dels mercaders.

Si algun[1] senyor de nau o leny haura carregat en algun loch de roba de mercaders, e anant a veles o que surt sia en algun loch se encontrara ab algun raig de fusta, axi com de arbres o de antenes o de veles o de qualque altre lenyam se volra; si lo senyor de la nau o leny li dara eap o l'li fara donar, perco que ell lo tir; si los mercaders, qui en la nau o leny seran, diran al senyor de la nau o leny, que jaquesca anar

[1] *Si algun*] Esp. 124, chapter ccxxi. begins here with the Rubric "Si alcun senyor de nau o de leyn aura carregat en alcun loch."

ship or vessel shall let her on freight before he has received advice or a message from him whom he has appointed to let her on freight, he is liable precisely as above set forth and declared. Nevertheless, if the managing owner of the ship or vessel shall transmit directions, to him whom he has appointed in any place to let the vessel on freight, that he should not accept any freight, if that agent has not accepted any freight when the managing owner of the ship shall have transmitted directions, he ought not afterwards to accept freight; and if he does so, the managing owner of the ship or vessel is not liable for any loss which may happen to him, and further, is not responsible for anything to those merchants who may have contracted with him to load their goods, since he has transmitted directions to him that he should not accept freight, because no person has power over what belongs to another, except so far as the other is willing to allow it. Nevertheless, if the agent shall have accepted freight before he knew the desire of the managing owner, his act ought to be valid as above said. Nevertheless, the managing owner of the ship or vessel ought not to let the whole of his vessel on freight absolutely, when he has given his authority to another to let it, until he shall have known with certainty from him whom he shall have constituted his agent to let the vessel what he has let for freight, and what not, in order that the loss above said may not fall upon him.

Chapter ccxiv. Of the managing owner who shall tow any derelict raft without the consent of the merchants.

If any managing owner of a ship or vessel shall have taken on board in any place the goods of merchants, and going under sail or being in surety in any place, shall meet with any raft of planks, or of masts, or of spars, or of sails, or of any other timber whatever, if the managing owner of the ship or vessel shall pay out or cause to be payed out a hawser, in order that he may tow it, if the merchants who are on board the ship or vessel shall say to the managing owner of the ship or vessel that he should let go the raft and that he should not tow it, and

aquell raig e que ell no l'tir; si lo senyor de la nau o leny no l'vol lexar, per dir que l's mercaders li facen, e si los mercaders diran e li denunciaran que, si ell no lexa anar aquell raig, que tot dan que l's esdevenga ne a la lur roba, que tot sia sobre ell; e si lo senyor de la nau o leny no l'lexara anar sobre allo que l's mercaders li hauran dit e denunciat; si als mercaders ne a lur roba vendra algun dan, lo senyor de la nau o leny los es tengut de tot aquell dan que ells per culpa d'ell hauran sostengut. E si ell no ha de que u pusca esmener, deu se n'vendre la nau o leny, que negu no y pot en res contrastar, salvo los mariners per los lurs loguers. E si la nau o leny no y basta, e lo senyor de la nau o leny ha alguns bens, deven esser venuts per fer esmena a aquells mercaders de tot lo dan que per culpa d'ell hauran sostengut. E si aquells seus bens no y bastaran, si ell es aconseguit, deu esser pres e star tant en la preso, entro que aquells mercaders sien entegrats, o que ell se sia avengut ab ells. E se per ventura lo senyor de la nau o del leny volra levar alguns d'aquells fusts, que en aquell raig seran, ell ho pot fer si los mercaders ho volran. E si ell los leva, malgrat dels mercaders, ell n'es tengut tot axi com ja desus es dit del raig a tirar, si los dits mercaders ne sostendran algun dan. E si per ventura en la nau o leny no haura mercader algu, e lo senyor de la nau o del leny s'encontrara ab raig e l'tirara, o n'levara algun fust; si los mercaders o la roba d'ells pendra dan, si ells en veritat metre ho poran, que per

if the managing owner of the ship or vessel is not willing to let it go in spite of what the merchants say, and if the merchants shall say and declare to him that if he does not let go that raft all the loss that shall happen to them or to their goods shall be set to his account, and if the managing owner of the ship or vessel shall not let it go after all that the said merchants shall have said and declared, if any loss shall accrue to the merchants or to their goods, the managing owner of the ship or vessel shall be responsible to them for all the loss which they shall have sustained through his fault. And if he shall not have wherewithal to indemnify them, the ship or vessel ought to be sold,[1] and no one can object in any way, saving always the claim of the mariners for their wages. And if the ship or vessel is not sufficient, and the managing owner of the ship or vessel has any property, it ought to be sold to make compensation to those merchants for all the loss which they have sustained through his fault. And if his property is not sufficient, if he is sued, he ought to be seized and cast into prison until those merchants are indemnified or he has made an arrangement with them. And if by chance the managing owner of the ship or vessel shall wish to hoist on board any of the planks which are in the raft, he may do so if the merchants are willing. And if he does hoist them on board in spite of the merchants, he is liable in full precisely as in the case of towing a raft, if the merchants shall suffer any loss. And if by chance there shall not be any merchant on board of the ship or vessel, and the managing owner of the ship or vessel shall meet with any raft and shall tow it, or shall hoist any planks on board, if the merchants or their goods shall take any harm, and if they can establish for truth the fact that by the fault of the raft, which the managing owner of the

[1] *sold*] A similar remedy is given where cargo is missing on board, chap. xiii., or where the managing owner breaks a contract with the merchants or mariners, chap. ccix.

culpa del raig que l'senyor de la nau o leny tirava, o per culpa d'aquell fust o fusts que ell haura levats, los sera esdevengut aquell dan, lo senyor de la nau o leny n'es tengut e obligat axi com desus es dit. Perque tot senyor de nau o leny deu fer en tal guisa co que a fer ha que no li puga tornar a dan co que ell fara.

Capitol ccxv. De nau nolieada per anar a carregar en algun loch.

Si mercader[1] o mercaders iran en algun loch estrany per nolieiar nau o leny, e que aquella nau o leny dega anar a carregar en aquell loch, que entre l'senyor de la nau o leny e los mercaders sera ja empres, a dia cert o a temps sabut, e aquella nau o leny que nolieiada sera, no sera venguda en aquell loch on devra carregar aquell dia o en aquell temps que l'sobredit senyor de la nau o leny havia empres ab los mercaders qui nolieiat l'auran, si los mercaders ne sostendran dan o messio o greuge algu, lo senyor de la nau o leny los es tengut de tot a restituir. E si per ventura los dits mercaders nolieiaran altra nau o leny per defalliment d'aquell qu' ells havien nolieiat, que no sera vengut a aquell dia o en aquell temps que entre lo senyor de la nau o del leny que ells hauran nolieiat era empres, si aquella dita nau o aquell dit leny que ells hauran hagut o nolieiat per culpa d'aquell, que ells ia habien nolieiat e no sera vengut axi com entre ells sera stat empres, si los costa mes de nolit, que no daven a aquell que ells ja habien nolieiat, lo senyor de aquella nau o de aquell leny que primer sera stat nolieiat, los es de tot tengut a restituir co que de mes los costara, perco,

[1] *Si mercaders*] Esp. 124, chapter ccxxii. here begins with the Rubric "Si mercader o mercaders iran en algun loch strayn."

ship or vessel has towed, or by fault of the plank or planks which he has hoisted on board, some loss has fallen upon them, the managing owner of the ship or vessel is bound and obliged as above set forth. Wherefore every managing owner of a ship or vessel ought to do in such a manner what he has to do, that what he does may not turn to his loss.

Chapter ccxv. Of a ship hired to go and load in any place.

If a merchant or merchants shall go to any strange place to freight a ship or vessel, and that ship or vessel ought to go and load in the place which shall have been agreed upon between the managing owner of the ship or vessel and the merchants by a certain day or at a given time, and the ship or vessel which shall have been hired shall not have come to that place where it ought to load, on that day or at that time which the aforesaid managing owner of the ship or vessel has agreed upon with the merchants who have hired her, if the merchants shall thereby sustain any loss, or expense, or prejudice, the managing owner of the ship or vessel is bound to make it all good.[1] And if by chance the said merchants shall hire another ship or vessel from the failure of that one which they have hired to arrive on that day or at that time which shall have been agreed upon between the managing owner of the ship and the merchants who have hired her, if that said ship or vessel which they have had to hire by the fault of that ship or vessel which they have hired, and which has not come accordingly as was agreed between them, should cost them more freight than they gave for that one which they had hired, the managing owner of that ship or of that vessel which was first hired by them is bound to make good to them the extra

[1] *all good*] This provision may be regarded as completing that which is set forth in chap. clxxxix., when the managing owner will not allow his ship to wait for the merchants during the time agreed upon.

car ell no sera vengut en aquell temps, que ell havia promes als mercaders com ells lo nolieiaren. E si per ventura passat lo temps que entre ells empres fo com ells lo nolieiaren, aquella nau o aquell leny vendra en aquell loch on carregar devia, si los mercaders ne hauran altre nolieiat, no li son de res tenguts, pus que no sera vengut en aquell temps que entre ells e los mercaders fo empres com ells lo nolieiaren. Empero, si aquella nau o aquell leny que ells havien nolieiada, vendra ultra lo dit temps que entre ells empres fo com la nolieiaren, e aquells mercaders no hauran nolieiada encara altra nau o altre leny, los dits mercaders son tenguts de donar a aquell qui vengut sera aquell carrech, qui nolieiat li havien. Empero, es axi a entendre que la senyor de la nau o d'aquell leny sia tengut de retre e de donar a aquells mercaders tot lo dan e tot lo destrich e tota la messio, que per culpa d'ell hauran feta e sostenguda qui tant se haura stat, si los mercaders demanar la li volran, e sien ne creguts per lur pla sagrament. Empero, sia axi a entendre, que si a aquell senyor de aquella nau o di aquell leny que ells primer havien nolieiat, ho haura tolt o vedat empediment de Deu, o de mar, o de vent, o de senyoria, e per culpa d'ell no sera stat romas que ell no sia vengut a aquell temps que ell promes e empres havia ab los sobredits mercaders, aquell senyor de la nau o del leny que ells nolieiat havien, no es tengut als mercaders de dan ne de destrich ne de messio, que ells hagen feta, pus per culpa d'ell no sera feta, e si los mercaders hauran nolieiada altra nau o altre leny, ells son ten-

cost,[1] because it has not arrived at that time which he promised to the merchants when they hired her. And if by chance when that time has passed which was agreed upon when they hired her, that ship or that vessel shall arrive at the place where she ought to load, if the merchants have hired another vessel, they are not bound to him in any respects, because he has not arrived at the time which was agreed upon between them and the merchants when they hired her. Nevertheless if that ship or that vessel which they have hired shall come after the said time which was agreed upon between them when they freighted the vessel, and those merchants have not yet hired another ship or another vessel, the said merchants are bound to give to him who has arrived the cargo which they have freighted. Nevertheless, it is to be understood that the managing owner of that ship or that vessel is bound to render and make good to those merchants all the loss and the prejudice and the expense which through his fault they have incurred or sustained by waiting so long a time, if the merchants wish to claim it, and they should be believed as to it upon their oath. Nevertheless, it should be understood that if any impediment of God or of the sea, or of the civil or of the local authorities shall have prevented or precluded the managing owner of that ship or of that vessel which they had first hired, and it was not from his fault that it resulted that he did not arrive at the time which he had promised to and agreed with the said merchants, that managing owner of the ship or of the vessel which they had hired is not responsible to those merchants for the loss or prejudice or expense which they have undergone, since it did not arise from his fault; and if the merchants have hired another ship or vessel, they are bound to the managing owner of

[1] *the extra cost*] A similar penalty is imposed on the managing owner, when he contracts to carry a larger cargo than his ship can load, and the merchant has to hire another ship, which costs more.

guts a aquest senyor de aquesta nau o de aquest dit leny, que ells primerament hauran nolieiat, de donar e de livrar lo carrech que ells nolieiat li havien e deven lo haver spatxat a aquell temps, que entre ells fonch empres com lo nolieiaren. E si los dits mercaders carrech donar no li poran,[1] ells son tenguts que li poguen aquell nolit, que entre ells fo empres de donar com lo nolieiaren, o que se n'avenguen ab ell, si lo senyor de la nau o del leny ne vol per avinenca, sino negu no l'ne pot forcar. Encara mes, que si lo senyor de la nau o leny haura a sostenir dan o messio per culpa dels mercaders que no l'hauran spatxat o no l'volran spatxar a aquell temps que ells promes li hauran, los dits mercaders li son tenguts de tot esmenar e restituir e lo senyor de la nau sia cregut per son sagrament. E fon fet perco aquest capitol, que a impediment de Deu, ne de mar, ne de vent, ne de senyoria algu no y pot res dir ne contrastar, ne es rao que puga fer. Perque quascu se guart e se deu guardar, que faca en tel guisa tot co que fara, que no li pusca tornar a algun damnatge, si ell fer ho pot.

Capitol ccxvi. Si mercader nolieiara nau en loch estrany e morra.

Si algun[2] mercader haura nolieiada nau o leny en algun loch estrany, e que aquella nau o aquell leny dega anar a carregar en aquell loch, en lo qual lo sobredit mercader haura empres ab lo sobredit senyor de la nau o leny a dia cert, si aquell mercader morra stant en aquell loch on la nau o leny haura nolieiat, si aquell mercader morra ab intestat o que l'dit mercader haia fet testament, lo senyor de la nau o del leny qui nolieiat sera, ans que ell partesca de aquell sobredit loch on sera nolieiat, en on encara aquell mercader hi sera mort, qui nolieiat lo haura, ans que

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[1] *no li poran*] Esp. 124 has the reading "e si tots los dits mercaders "donar no li volran o no porran."

[2] *Si algun*] Esp. 124, chapter ccxxiii. begins here with the Rubric "Si algun mercader aura noliejada "nau o leyn en algun loch stray n.

that said ship or vessel, which they have first hired, to give and deliver to him the cargo which they have freighted and ought to have despatched at that time, which was agreed upon between them when they hired the vessel. And if the said merchants cannot give him a cargo, they are bound to pay him that freight which was agreed upon between them that they should pay when they freighted the vessel, or they must arrange with him, if the managing owner of the ship or of the vessel is willing to make an arrangement, otherwise no one can compel him so to do. Still further, if the managing owner of the ship or vessel has to sustain loss or expense by the fault of the merchants who have not despatched it, or are not willing to despatch it at the time which they have promised, the said merchants are bound to make full compensation and restitution, and the managing owner of the ship should be believed upon his oath. And this chapter was made because no one can say or object anything against an impediment of God, or of the sea, or of the wind, or of the local authorities, nor is it reasonable that he may so do. Wherefore every body must beware and ought to guard himself that he do everything which he shall do in such a manner that it cannot turn to any disadvantage, if he can possibly so do.

Chapter ccxvi. If a merchant shall hire a ship in a strange place, and shall die.

If any merchant has hired a ship or vessel in any strange place, and that ship or that vessel ought to go to load a cargo on a certain day in that place, in which the aforesaid merchant has agreed with the said managing owner of the ship or vessel that she should land a cargo, and if that merchant shall die whilst staying in the place where he has hired the ship or vessel, and shall die intestate, or if he shall have made a will, the managing owner of that ship or of that vessel which has been hired, before she departs from that aforesaid place where she has been hired, and where likewise that merchant who hired her has died, and before he

ell faca messio, ell deu trametre al companyo que aquell sobredit mercader, qui mort sera, havia en lo seu loch on usava o era vehi, e que y trameta una carta sua o missatge cert a aquell companyo qui era d'aquell sobredit mercader en sa vida, qui mort es, e haver fadiga d'ell, si volra que aquella nau o leny, que son sobredit companyo havia nolieiada en temps que ell era viu, faca lo viatge. E si aquell companyo vol e quer, que aquell sobredit companyo seu haura fet, lo qual mort sera, valla e haia valor, e aquella sobredita nau o aquell sobredit leny que venga, que ell est prest e aparellat, de complir tot co que aquell sobredit son companyo, qui mort sera, havia promes a aquell sobredit senyor de aquella sobredita nau o de aquell leny lo dia que ell nolieia. E si per ventura lo senyor de la nau o del leny, qui nolieiat sera, vendra en aquell loch, on devia carregar, abans qui fadiga no haura haguda del companyo de aquell mercader qui nolieia, qui mort sera, aquell companyo qui viu romas no li es de res tengut, si no s'vol, perco com l'ome pusque es mort no ha companyo, que lo dia que l'home es mort es partida la companyia. Salvo empero, qui si aquell mercader qui mort sera havia obligat aquell companyo, qui seu era en vida, en la carta que ell feta havia a aquell senyor de la nau o del leny, per rao del nolit e de tota la convinenca que ell attendre li havia, aquell companyo n'es tengut que ell la li attena. En axi empero es a entendre, que aquell companyo qui mort sera hagues loch de son companyo que pogues nolieiar per ell, co es a entendre, qu'ell ne hagues fet carta de cessio o de procuracio

shall make any expenditure, ought to write to the partner,[1] whom that aforesaid merchant had in the place which he was usually resident in or was neighbouring to, and transmit thither a writing or a certain message to him who was the partner of that merchant who is dead during his lifetime, and ought to obtain a declaration from him if he is willing that the ship or vessel, which his aforesaid partner has hired during his lifetime, should make the voyage. And if that partner wishes and desires that the abovesaid hiring and agreement which was made by his aforesaid partner, who is now dead, during his lifetime shall be valid and take effect, that aforesaid ship or vessel should set out, when she is ready and apparelled, to perform all that which his above-mentioned partner, who is dead, has promised to that aforementioned managing owner of that said ship or vessel on the day when he hired it. And if by chance the managing owner of the ship or vessel, that has been hired, shall come to that place where he ought to load a cargo, before he has had a declaration from the partner of that merchant, who hired the vessel and who is dead, the partner who remains alive is not liable for anything, if he does not choose, because a man who is dead has no partner since on the day when he died the partnership was severed.[2] Saving nevertheless, that if the merchant who is dead bound that partner, who was his partner when alive, by the writing which he executed for that managing owner of the ship or vessel in respect of the hiring and the entire agreement, that he would have to observe it, that partner is bound to observe it. Nevertheless, it is to be understood that the partner who is dead had authority from his partner that he might hire the vessel for him, that is to say, that the latter has given him a mandate

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[1] *partner*] The same word occurs in chapter lxxx.

[2] *was severed*] A similar principle of law is affirmed in chapters iv. and ix., and likewise in chapters ccxviii. and ccxix.

o que n'hagues testimonis que qualque cosa que ell faes, que ell ho haura per ferma. Si aquesta carta o testimonis lo senyor de la nau o leny, qui nolieiat sera, pora mostrar, aquell companyo que viu sera li es tengut tot en axi, com aquell qui nolieiat era o fora, si ell viu fos. E si lo senyor de la nau o leny mostrar cartes ne testimonis no porra, aquell companyo qui viu sera romas, no li es de res tengut, si be aquell companyo seu lo havia mes en la carta de la obligacio del nolit que ell fet havia ab aquell senyor de la nau o leny que havia nolieiat, pusque per voluntat de aquell no fon fet; que dura cosa seria, que si algun hom obligara altre per sa autoritat, e sens sabuda de aquell a qui ell obligara, valia o havia valor, seria mala cosa, que tot hom poria desfer a altre. Perque no es dret, ne es rao que algu puga obligar a altre per alguna rao si donchs justes raons no y havia, com ia desus son dites. E si per ventura aquell mercader qui mort sera, qui la nau o leny haura nolieiat, haura fet testament e en son testament haura departit sos bens a sos fills o a sos prohismes o a qui s'volra, e l'un d'aquells haura fet hereu, e lo senyor de la nau qui nolieiat sera, sabia que aquell mercader qui nolieiat l'aura es malalt e haura fet tot son orde: si lo senyor de la nau ho sap cert que ell es malalt, si lo senyor de la nau hi es a temps abans que ell muyra, ell li deu dir en presencia de bons homens, que si Deu fahia ses voluntats d'ell, que volra que fos d'aquell nolit que ell li haura fermat e que n'tendra per be, e que ell que fes, que si Deu fahia ses voluntat d'ell, que ell no fos malcaent. E si aquell mercader, qui nolieiat lo haura e qui sera malalt, li dira,[1] que ell que pens de espatxar prest, que ab Deu ell lo n'guardara de tot damnatge, e que per la sua malaltia no stiga, qu'ell no attena

[1] *li dira*] Esp. 124. Li dira is also the reading of the editions of 1494 and 1502. M. Pardessus has "li dara," which is probably an error of the press.

or procuration in writing, or that he has witnesses, that every thing which he should do would be held valid by him. If the managing owner of the ship or vessel can exhibit that writing or produce those witnesses, the partner who is alive is bound to him precisely as he who hired the vessel was, and would be, if he was alive. And if the managing owner of the ship or vessel cannot produce either writings or witnesses, the partner who remains alive is not bound in any respect to him, even if that partner of his shall have inserted it in the written contract, of hiring which he entered into with the managing owner of the ship or vessel who let it for freight, since it was not done with his consent; for it would be a hard thing, if any man could bind another by his own authority, and if without the knowledge of him for whom he made the obligation, it were valid and took effect; and it would be a bad thing, for any man could ruin another. Wherefore it is not right nor is it reasonable that anyone should be able to make an obligation for another on any ground, if there be not just reasons as already above explained. And if by chance that merchant who is dead, who has hired the ship or vessel, has made a testament and in his testament has distributed his property to his sons or to his nearest of kin, or to whomsoever he chooses, and has made one of them his heir, and the managing owner of the ship knows for certain that he is ill, if the managing owner of the ship is in time before he dies, he ought to ask him in the presence of honest persons, if God's will be done in his case, what he wishes should be done with the contract of hiring which he has concluded and which he holds to be valid; what he will do, if God shall dispose of him at his pleasure, in order that he may not be prejudiced. And if that merchant, who has hired the vessel and who is ill shall say, that he thinks of despatching him immediately, that with God's help he will protect him from all loss, and that his illness shall not prevent him performing all that

tot co que promes li haura, que ell es aparellat de attendre tot co que li ha promes: e si lo senyor de la nau o leny se partira d'ell qui malalt sera ab la sua voluntat, e ell li fara carta o la li fara fer, es a entendre, letra segellada del seu segell a son companyo, si l'ha, o a hom qui per ell sia en aquell loch, que ell degue expatxar aquella nau o leny o li deguen delivrar aquell carrech perque ell nolieiat havia la nau; si aquella nau o leny sera vengut en aquell loch on devia carregar, e stant la nau o lo leny aqui vengut, aquell mercader qui li haura nolieiat sera mort, e la mort sua vendra a saber a son companyo; si l'hom o aquell qui en loch d'ell hi sera, si aquells se abstrauran, que no la volran carregar ne espatxar, los bens de aquell mercader, qui mort sera, s'y deven parar. Pusque l'senyor de la nau o del leny se fadigua a ell, qui malalt era, ans que n'volgues partir d'alla on fo nolieiat, e ab voluntat e ab sabuda de aquell qui nolieiat l'havia e ab letra sua se n'parti: en la qual letra fahia manament a son companyo, si l'havia, o altri que en son loch fos, que ells lo deguen espatxar tot en axi com ell li havia promes. E si per ventura lo senyor de la nau o del leny no sera partit de aquell loch, on ell fo nolieiat, ans que fos mort aquell mercader qui nolieiat lo havia; ell no s'en deu partir tro que haia tramesa carta o missatge seu al dit companyo o a aquell qui havia fet hereu aquel mercader qui mort sera e havia nolieiat, que vinga per levar aquell carrech que ell nolieiat li havia. E si ells o lo un d'ells li attendran totes aquelles convinences, que aquell li havia promeses com lo nolieia; e si ells trameten a dir per carta lur, ab lur segell segellada o per missatge cert, que la nau o leny que pens de venir, que ells o lo un d'ells es prest e aparellat de attendre tot co que

he has promised, and that he is prepared to perform all that he has promised; and if the managing owner of the ship or vessel shall quit him who is ill with his consent, and the sick man shall make or cause to be made for him a writing, that is to say, a letter sealed with his seal to his partner, if he has one, or to the person who acts for him in that place, that he ought to despatch that ship or vessel, and that he ought to deliver that cargo for which he has hired the ship, if that ship or vessel shall have arrived in that place where she ought to load, and whilst the ship or vessel which has arrived there is still in port the merchant who has hired her shall die, and his death becomes known to his partner, if he or the person who shall be in his place withdraw themselves and will not load nor despatch the vessel, the goods of that merchant who is dead must make reparation. Since the managing owner of the ship or vessel consulted him who was ill, before he resolved to set out from the place where the hiring took place, and he set out with the consent and with the knowledge of him who made the hiring, and with his letter, in which letter he gave directions to his partner if he had one, or to some one else who was in his place, that he ought to despatch every thing just as he promised it. And if by chance the managing owner of the ship or vessel has not set out from the place where it was hired, before the merchant who hired it was dead, he should not set out until he has transmitted a writing or message on his part to the said partner, or to him whom the merchant who is dead and has hired his ship has made his heir, that he should come to put on board the cargo which he has freighted. And if they or one of them shall observe all the covenants which he who hired the vessel has agreed to, if they shall transmit directions by a writing sealed with their seal or by a sure messenger, that the ship or vessel should make haste to come, and that they or one of them is ready and prepared to perform all which he who has hired the ship

aquell qui nolieiat la haura, li havia promes e en la carta del nolit, que entre ell e lo dit nolieiador sera feta, es contengut, la donchs ell pot venir e amenar la nau. E si ell ne sofferra algun dan o messio per culpa de aquells, qui la carta o lo sobredit missatge li haura trames, e ells li son tenguts de tot a restituir entegrament, e encara de aquell carrech a donar, pusque per manament d'ells hi sera vengut e ab lur fadiga. Empero, si lo senyor de la nau o del leny vendra en aquell loch on devia carregar, o partira de aquell loch on era stat nolieiat, depuys que aquell mercader sera mort, e es axi a entendre, que aquell mercader, qui mort sera, haia fet testament e en lo testament haia fet algun son hereu, si lo senyor de la nau o leny vendra en aquel loch on devia carregar a aquell dia o temps en lo qual ell havia promes, e en la carta del nolit sera contengut a aquell qui l'nolieia; si aquell qui l'nolieia, qui mort sera, haura feta mencio o manament, qui aquell seu hereu dega donar aquel carrech que ell havia nolieiat e promes a aquella nau o leny, aquell qui hereu sera romas lo li es tengut de donar. E si far no u volra, senyoria lo n'deu destrenyer, que mester es que l'manament del defunt sia complit. Empero, si lo defunt no n'havia feta mencio ne manat no u havia en aquella sua derrera voluntat, aquell qui ell haura lexat per son hereu en son testament, si no s'vol, no n'es tengut. Empero, es axi a entendre que aquell hereu no l'vulla portar en alguna part, sino que l'volra aqui vendre per complir lo manament d'aquell qui mort sera, segons que ell haura fet manament en la sua derrera voluntat; encara mes, perco car aquell senyor de aquella nau o leny sera aqui vengut menys de sabuda o menys de fadiga que no haura haguda de aquell qui hereu sera romas. Empero si aquell, qui hereu sera romas, no la volra aqui vendre, ans ell

has promised, and which is contained in the written contract of hiring which was made between the said managing owner and the said hirer, thereupon he may come and bring with him the ship. And if he shall sustain any loss or expense by the fault of those, who have transmitted the directions in writing or by a messenger, they are bound to make full restitution and indemnification to him, and further to furnish him with that cargo, because he has come by their directions and by their order. Nevertheless if the managing owner of the ship or vessel shall come to that place where he ought to load, or shall set out from the place where his ship was hired, after that merchant is dead, and it is to be understood that the merchant who is dead has made a will, and in the will has constituted some one his heir, if the managing owner of the ship or vessel shall come to that place where he ought to load on the day and at the time which he had promised to the person who chartered the ship, and which is contained in the charter party, if he who freighted her, who is dead, has made mention or given directions that his heir ought to furnish the cargo which he has freighted and promised to that ship or vessel, he who is left heir is bound to furnish it. And if he will not do so, the local authorities ought to compel him, for it is incumbent that the directions of the deceased should be complied with. Nevertheless, if the deceased has not made mention nor given any direction in his last will, he whom he shall have left his heir in his testament is not bound, if he does not wish it. Nevertheless, it is to be understood that the heir does not wish to carry the cargo to any part, but wishes to sell it there in order to comply with the directions of him who is dead, according as he has given directions in his last will; still more, because the managing owner of that ship or vessel has come there without the knowledge and without the assent of him who is left heir. Nevertheless, if he who has been left heir does not wish to sell the cargo there, on the

volra trametre o portar dita roba o carrech devers aquelles parts en les quals aquell qui mort sera les havia en cor de portar, si visques, e les havia nolieiades; si aquell hereu no les volra mettre en aquella nau que aquell, qui mort sera, havia nolieiada, e per fe d'aquell qui mort es hi sera venguda; si ell la met en altra nau e no en aquella, los bens de aquell defunt ne son obligats a aquell senyor de la nau que ell havia nolieiada en sa vida, si lo senyor d'aquella nau havia attes tot lo que havia promes a aquell qui nolieia. Empero, si ell attes no u havia, aquell hereu ne los bens del defunt qui nolieiat l'havia, no li son de res tenguts ne obligats, si donchs lo senyor de la nau no u podia mostrar o provar justa escusa o just empediment, que per culpa d'ell no romas que ell no hagues attes. E si ell provar ne mostrar no u pora, aquell hereu ne los bens del defunt no li son de res tenguts, pusque ell no haura attes co que havia promes. Empero, si lo senyor de la nau provar o mostrar ho pora, aquell qui hereu sera e encara los bens d'aquell defunt, qui l'nolieia, li son obligats, axi com es dit.

Capitol ccxvii. Si a mercader, qui nolieiara nau, vendra malaltia.

Si algun[1] mercader nolieiara nau o leny, e com ell haura aquella nau o aquell leny nolieiat, vendrali cas de ventura que li vendra malaltia, e si ell haura promes al senyor de la nau o de aquell leny, que ell haura nolieiat, que ell lo deu haver spatxat a dia cert, e si aquella mercader, qui malalt sera, dira o fara dir a aquell senyor d'aquella nau o d'aquel leny que ell haura nolieiat, que pens de fer son prou la on fer lo pusca, perco com aquell mercader no li pot attendre co que promes li haura, perco que es malalt, que si ell fos sa, volunter li u atenguera; e si lo senyor de la nau li demana la messio que ell feu per ell, lo mer-

[1] *Si algun*] Esp. 124, chapter ccxxiv. here commences with the Rubric "Si alcun mercader nolie- | "jara nau o leyn, e com aura "noliejat."

contrary shall wish to transmit and carry the said goods and cargo to those parts to which he who is dead had it in his intention to carry them, if he had continued to live, and for which he had chartered the vessel; if his heir shall not be willing to put them on board of the ship, which he who is dead shall have chartered, and which has arrived in reliance on the good faith of him who is dead; if he puts them on board of another ship and not on board of that ship, the effects of the deceased are liable to that managing owner of the ship which he had chartered during his lifetime, if the managing owner of that ship has observed all that he has promised to him, who has chartered it. If however he has not observed all his promises, neither the heir nor the effects of the deceased, who has chartered the vessel, are liable or obliged in any respect, unless the managing owner of the ship or vessel can show or prove a just excuse or a just impediment, that it has not resulted from any fault of his that he has not observed them. And if he cannot shew or prove it, neither the heir nor the effects of the deceased are liable in any respect, since he has not kept his promises. If however the managing owner of the ship can prove or shew it, he who is his heir and moreover the effects of the deceased, who has chartered the ship, are liable as above explained.

Chapter ccxvii. If a malady attacks a merchant who has chartered a ship.

If any merchant shall freight a ship or vessel, and after he has freighted the ship or vessel, a misfortune befalls him that a malady attacks him, and if he has promised to the managing owner of the ship or of the vessel, which he has freighted, that he will despatch her on a certain day, and if that merchant, who falls ill, shall say or cause to be said to that managing owner of that ship or of that vessel which he has freighted, that he must think of making his money wherever he can, since he cannot perform what he has promised because he is ill, which he would have done willingly if he had been well; and if the managing owner demands his expenses which

cader no li n'es tengut, pus no es sa culpa, ne encara mes perco com lo li u haura fet a saber[2] dins lo terme, que ell devia haver spatxat; e encara es en aquella meteixa voluntat que li attena tot co que li promes, si aquell senyor de aquella nau o d'aquell leny lo vol sperar que ell sia guarit; e encara mes per altra rao no li n'es tengut, perco com a impediment de Deu negu no y pot res dir ne contrastar. Empero, si lo dit mercader caura en malaltia pus que la nau o lo leny haura nolieiat, e ell no u fara a saber a aquell senyor de la nau o leny que ell haura nolieiat dins aquell temps que ell lo devia esperar, e pus que aquell temps, que entre ells era stat empres, sera pasat, lo dit mercader li u fara a saber e li dara paraula o la li fara donar, que ell que pens fer son prou la on lo tropia; si aquell senyor de la nau o leny haura feta messio, perco com aquell mercader no li u haura fet a saber, axi com fer deguera, en aquell temps que entre ells era stat empres, aquell mercader li n'es tengut que la li restituesca, perco com ell no lo y aura fet a saber dins aquell temps que l'devia haver spatxat. Empero si lo senyor de la nau o del leny ne haura sostengut algun dan o algun greuge, aquell mercader no li es tengut, pus ell no roman de viatge per sa voluntat no per frau algu, que ell li volgues fer, mas tan solament per la malaltia que hague ab si. Empero, si lo dit mercader sera ja malalt com la nau o lo leny nolieia, si ell se abstraura de anar en aquell viatge que sera empres dins aquell temps que ell haura empres, que degues haver spatxada aquella nau o aquell leny, axi es a entendre, que aquella malaltia que ell havia li fos encruscada, per que per altre frau no u fes, ell es

[1] *a saber*] Esp. 124 has the reading "com lo li haura feit esaber," which agrees in sense with the reading adopted by Capmany. The editions of 1494 and 1502 have the reading "com no li u haura fet a saber," which has been followed in all the printed editions, but it is obvious that the correction of "lo" for "no" made by Capmany, which is supported by Esp. 124, is required by the context.

he has made on his account, the merchant is not liable for them, since it is not his fault, and still more because he has given him notice within the term at which he ought to have despatched the vessel, and further it is in his intention to perform all that he has promised, if the managing owner of the ship or vessel is willing to await his recovery; and still more for another reason, because no one can dispute or contest an impediment of God. Nevertheless if the said merchant falls ill after he has freighted the ship or the vessel, and he does not make it known to the managing owner of the ship or vessel, which he has freighted, within the time during which he ought to wait for him, and, when the time which has been agreed between them shall have passed, the said merchant shall make it known to him, and shall give him permission, or cause it to be given to him, that he must think of making money wherever he can find it: if that managing owner of the ship or vessel has incurred expenses because the merchant has not let him know, as he ought to have done, during the time agreed upon between them, the merchant is bound to reimburse him, because he has not made it known to him within the time when he ought to have despatched him. Nevertheless, if the managing owner of the ship or vessel shall have sustained any loss or any prejudice, that merchant is not liable, since he has not abandoned the voyage intentionally, nor from any fraud which he wished to perpetrate, but only from the illness which he underwent. Nevertheless, if the said merchant was already ill when he freighted the ship or the vessel, if he shall decline to go on that voyage, which has been agreed upon, within that time which he has agreed upon, within which he should despatch that ship or that vessel, that is to say, although that illness, which he had, has increased, so taat he does not do it from any fraud, he is bound to render and pay

tengut de retre e de donar a aquell senyor de aquella nau o d'aquell leny, que ell havia nolieiat, tota la messio qui ell haura feta per culpa d'ell, e sia cregut per son sagrament, que la culpa es del mercader, pus malalt era, per que nolieiava nau o leny, ni se empatxava ab algu per fet de nolieiar. Encara mes, si lo dit mercader no u fara a saber a aquell senyor d'aquella nau o d'aquell leny, que ell se vulla abstrer de anar en aquell viatge, dins aquell temps que ell lo devia haver spatxat, e puys passat aquell temps que entre ell sera empres, que ell lo devia haver spatxat, li u fara a saber, es tengut de donar e de retre a aquell senyor de aquella nau o leny tot dan e tota messio e tot greuge que n'haia sostengut. Empero, aquell dan e aquell greuge deu esser mes en coneguda de dos bons homens de mar, qui u meten en adob e en egualtat per rao del encruscament de la malaltia que ell haura, que per altra rao no: que, si a aquell mercader no era encruscada la malaltia, si no que s'sostengues en aquella forma e en aquella manera que era com la nau o leny nolieia, no deu esser mes en poder d'algu, si no que pens de donar e de retre a aquell senyor d'aquella nau o leny, que ell haura nolieiat, tot greuge que ell haura sostengut, sens tot contrast, perco com per culpa d'ell lo haura sostengut. E en aquella meteixa manera que desus es dit es tengut e obligat lo senyor de la nau o leny als mercaders, a qui ell nolieia sa nau o leny, axi com en lo capitol desusdit se conte.

Capitol ccxviii. De mercader qui nolieiara nau e

Si algun[1] mercader haura nolieiada alguna nau o leny, si aquell mercader, qui aquell leny o aquella nau haura nolieiat, morra ans que sia carregada la nau de tot o de partida, ell ne los bens d'ell no son tenguts de res a aquell senyor de qui aquella nau o leny sera, que ell haura

[1] *Si algun*] Esp. 124, chapter ccxxv. here commences with the Rubric "Si alcun mercader aura noliejada nau o leyn; si aquell mercader. The word "morra" has been added in black ink."

to the managing owner of that ship or that vessel, which he has freighted, all the expenses which he has incurred through his fault, and he shall be believed upon his oath, for the fault was that of the merchant, since he was ill, in hiring the ship or vessel, and in engaging himself with anyone in a business of freight. Still further if the said merchant shall not make it known to that managing owner of the ship or vessel, that he intends to decline to go on that voyage, within the time during which he ought to have despatched her, and after that time has passed which was agreed upon between them, within which he was to despatch her, he makes his intention known to him, he is bound to pay and to render to that managing owner of the ship or vessel all the loss and all the prejudice which he has sustained. Nevertheless that loss and that prejudice ought to be submitted to the award of two Prudhommes of the Sea, who shall adjust it fairly and equitably with reference to the increase of his illness which he had, and to no other matter: for, if the illness of the merchant has not increased, and it continues in the state and manner in which it was when he freighted the vessel, it ought not to be referred to the arbitration of any one to relieve him of the obligation of paying and rendering to the managing owner of that ship or vessel, which he has freighted, all the prejudice which he has sustained, without any dispute, since he has sustained it through his fault. And in the very same manner the managing owner of the ship or vessel is liable and responsible to the merchants, to whom he has let his ship or vessel, as set out in the aforesaid chapter.

Chapter ccxviii. Of a merchant who shall charter a ship, and shall

If any merchant has chartered any ship or vessel, if that merchant, who has chartered the said vessel or ship, shall die before the ship is laden in whole or in part, neither he nor his goods are liable for anything to the managing owner to whom that ship or vessel belongs,

morra ans que sia carregada.

nolieiat, per que a hom, qui mort sera, convinenca que haia feta no li nou, salvo empero per deute que ell deia o tort que ell tenga, que deu esser pagat del ses bens, si alguns ne ha o que n'sien trobats. Empero, pus que l'mercader haura carregada aquella nau o leny, qui nolieiat haura de tot o de partida, si ell morra e ell la haura carregada dins lo temps que ell la devia haver spatxada, ell no es tengut al senyor de la nau de messio que ell ne haia feta per tal rao; perco, car es semblant, que si ell visques, que hauria en cor de atendre a aquell senyor d'aquella nau tot co que promes li haura, e pus mort lo y tolt, no es sa culpa; que a mort no y esta algu. Empero, si ultra lo dit temps la havia de tot carregada, si lo dit mercader morra, los bens d'aquell son tenguts de satisfer la messio, que aquell senyor de aquella nau ne haura feta per culpa d'ell, qui no l'haura spatxat en aquell temps que l'devia spatxat, e no li haura donada paraula, que ell que faes son prou, que ell no era en cas ne guisa que li pusca attendre co que promes li havia. Empero, si lo mercader haura carregada la nau o leny, e la nau o leny haura feta vela e lo mercader puys morra, on se vulla que sia que muyra, lo senyor de la nau se n'deu tornar la on haura carregada aquella roba e retre e donarla a sos proismes, si en aquell loch, on havien carregat, seran. E si en aquell loch, on havien carregat, proismes o comanadors alguns no haura, lo senyor de la nau o leny deu fer descarregar aquella roba de aquell mercader, que mort sera, e fer posar en

which he has chartered, because no contract [1] attaches to a man who is dead, saving always for debt which he owes or wrong which he has done, which ought to be paid from his effects if he has any, or if any shall be found. Nevertheless, after the merchant has laden that ship or vessel, which he has freighted either in whole or in part, if he shall die, and if he shall have laden her within the time within which he should have despatched her, he is not liable to the managing owner of the ship for the expense which he has made for this reason; because it is probable that if he had lived he would have had resolution to perform all which he had promised to that managing owner of the ship, and since death has carried him off, it is not his fault, for no one can resist death. Nevertheless, if he shall have fully loaded her after the said time, if the said merchant shall die, his goods are liable to satisfy the expenses which that managing owner of the ship shall have incurred through the fault of him who has not despatched it in that time within which he ought to have despatched it, and has not given permission for him to make his money, since he was not in a condition or state in which he could perform what he had promised. Nevertheless, if the merchant has laden the ship or vessel, and the ship or vessel has made sail, and the merchant afterwards dies, wherever it may be that he dies, the managing owner of the ship ought to return there where he has laden the goods, and render and give them up to his next of kin, if they be in the place where he has loaded his vessel. And if there be no next of kin or agent of the deceased in the place where he has loaded his vessel, the managing owner of the ship or vessel ought to discharge those goods of that merchant who is dead, and deposit them on land in a place which

die before she is laden.

[1] *no contract*] This principle of law is affirmed in chapt. iv. where a third exception is mentioned, that of a "comanda" or maritime mandate, see also ch. ccxvi.

terra en loch que sia salvo, e quant la roba sera en terra en loch salvo, lo senyor de la nau o leny deu trametre carta sua ab misatge cert a aquell loch on sapia que sian e deian esser los seus proismes o aquells de qui ell tenia les comandes. Empero totes les averies, que ell fara per rao de aquella roba a descarregar, deu pagar la roba. E encara mes, quant que algun proisme, o algun d'aquells qui les comandes havien fetes a aquell qui mort sera, seran aqui venguts en aquell loch, on lo senyor de la nau o leny haura feta descarregar aquella roba de aquell mercader qui mort sera, ells son tenguts de satisfer tot lo dan e messio, que lo senyor de la nau o del leny haura sostengut per rao d'aquella tornada que haura haguda a fer. E si lo senyor de la nau o leny e aquells proismes o aquells qui les comandes hauran fetes a aquell mercader qui mort sera no se n'poran avenir, deu esser mes aquell contrast, que entre ells sera, en vista e en coneguda de dos bons homens qui sien dignes de fe e que sapien e que sien de la art de la mar, e qualsevol cosa, que aquells dos bons homens ne diran e tendran per be, allo n'deu esser seguit. E si lo senyor de la nau o leny guanyara res de nolit, ell es tengut de donar als mariners pur lur loguer en aquella forma que ell guanyara de nolit. Empero, si los proismes e aquells qui les comandes havien fetes seran en aquell loch on lo senyor de la nau o leny havia carregat e encara sera tornat a descarregar, si aquells proismes e aquells qui les comandes havien fetes se acordaran que aquella nau o leny, que aquell mercader qui mort sera havia carregat, que vaia e que faca aquell viatge, en lo qual devia anar ab aquell mercader si viu fos, lo senyor de la nau es tengut de anar hi, ells pagant empero tot

shall be safe, and when the goods are on shore in a safe place, the managing owner of the ship or vessel ought to transmit a writing with a certain message to that place where he knows that his next of kin, or those from whom he held commissions are or ought to be. Nevertheless, all the outgoings which he has to provide by reason of having to discharge the goods, the goods themselves ought to defray. And still further, whenever any next of kin, or any of those who have entrusted commissions to him, who is dead, shall have come to that place, where the managing owner of the ship or vessel shall have caused to be discharged the goods of the merchant who is dead, they are bound to satisfy all the loss and expense which the managing owner of the ship or vessel has sustained by reason of the return which he has had to make. And if the managing owner of the ship or vessel, and those next of kin, or those who have entrusted commissions to that merchant who is dead, cannot agree together, the dispute which shall arise between them ought to be submitted to the inspection and award of two Prudhommes who are worthy of trust, and who know and are practised in the business of navigation, and whatever thing those two Prudhommes shall say and hold to be right, it ought to be followed. And if the managing owner of the ship or vessel shall earn any freight, he is bound to give to the mariners for wages in proportion as he shall have earned freight. Nevertheless, if the next of kin, and those who have entrusted commissions to the deceased shall be in that place where the managing owner of the ship or vessel has loaded and again returned to unload, if those next of kin, and those who have entrusted commissions to the deceased, shall agree that the ship or vessel, which that merchant who is dead shall have loaded, shall go and make that voyage, on which it ought to have gone with that merchant if he were alive, the managing owner of the ship is bound to go there, they paying,

destrich e tota la messio que ell haura feta per rao de aquella tornada, que ell haura haguda a fer per rao de aquell mercader qui mort sera ; o que se n'avenguen ab ell e encara que li facen carta que ells o lo un d'ells li attena tot co, que aquell mercader qui mort sera li era tengut de attendre, si viu fos. E si ells o l'un d'ells li attendran aco que desus es dit, lo senyor de la nau o leny los es tengut de anar, e en altra manera no. Mas empero, si aquell mercader qui mort sera haura carregada aquella nau o leny en terra de Sarrains o en loch perillos per anar a descarregar en terra d'amichs, lo senyor de la nau no es tengut pas de tornar en aquell loch on haura carregat, ans deu anar a descarregar en aquell loch on havia empres ab aquell mercader, qui la donchs era viu e qui sera mort, e aqui descarregar. E ans que descarrech, ell ho deu fer a saber a la senyoria, e ab testimoni de mercader e de la senyoria ell deu fer metre la roba en botigues e en loch qui sia salva a aquells, de qui esser deu. E la senyoria ab consell de mercaders deu fer vendre d'aquella roba tanta, tro que haia entegrat al senyor de la nau o del leny tot aquell nolit, que ell haber devra, e encara mes avant que sien totes les averies pagades, que per rao d'aquella roba seran fetes ; empero es axi a entendre, si en aquell loch no seran los proismes, o aquells qui les comandes hauran fetes a aquell mercader qui mort sera. E si aqui no seran, lo senyoria ab lo senyor de la nau o leny deu los trametre carta en aquell loch on pusquen saber que sien, e la senyoria ab consentiment des bons homens d'aquell loch, on la roba sera descarregada, deu la tenir en se-

however, all the losses and all the expense which he has undergone by reason of that return, which he has had to make on account of that merchant who is dead; or if they shall arrange with him and shall further make a charter party with him that they or one of them will perform all that which the merchant who is dead was bound to perform, if he were alive. And if they, or one of them, shall perform that which is above mentioned, the managing owner of the ship or vessel is bound to them to go, and in any other manner not so. But nevertheless, if that merchant, who is dead, has loaded that ship or vessel in a land of Saracens, or in a perilous place, to go and discharge in the land of friends, the managing owner of the ship is not bound to return to that place where he has loaded his ship, on the contrary, he ought to go and discharge the goods in that place where he had agreed with that merchant, who was then alive, and is since dead, to discharge there. And before he discharges, he ought to make it known to the local authorities, and in the presence of merchants and of the local authorities he ought to have those goods put into stores, or into a place which may be safe for them, to whom they ought to belong. And the local authorities, with the advice of the merchants, ought to cause to be sold of those goods as much as will indemnify the managing owner of the ship or vessel for all the freight which he ought to have, and still further, in order that all the outgoings may be defrayed, which have been incurred by reason of those goods; nevertheless, it is to be understood that in that place there are not the next of kin, nor those who have entrusted commissions to that merchant who is dead. And if they be not there, the local authorities, with the managing owner of the ship or vessel, ought to transmit to them the charter party to that place where they can ascertain that they are, and the local authorities, with the consent of the Prudhommes of that place where the goods have been unloaded, ought to keep them seques-

questra, pus que los proismes, o aquells que les comandes havien fetes a aquell mercader qui mort sera, sien aqui venguts o hom per ells. Empero, si era roba de que hom hagues dubte que s'pogues affollar, deu esser venuda, e la moneda, que hom ne haura, deu esser mesa en loch, que tota hora que venguen aquells, qui haver la deian, la puscan haver ells o hom per ells, menys de contrast algu, pus sia cert que aquells qui haver la deian o hom per ells haura aqui vengut, qui la demanen. E per aquestes raons desusdites fo fet aquest capitol.

Capitol ccxix. De nau nolieiada e lo patro morra ans que sia carregada.

Si algun[1] senyor de nau o leny haura nolieiada la sua nau o leny a algun mercader, si lo senyor de la nau o leny morra ans que la nau o leny sia carregat de tot o di partida, aquella nau o leny[2] a qui al senyor sera esdevengut aytal cas, com desus es dit, no es tenguda de anar al viatge, si donchs los personers ab los proismes de aquell qui mort sera no s'acordan, que la dita nau o leny que hi vaia, o si donchs tots los personers o la major partida no eren stats al nolieiar, e que tots o lo un d'aquells fos obligat a aquell mercader, qui aquella nau o aquell leny haura nolieiat; per rao, car hom mort no ha ne pot haver senyoria en res d'aquest segle, salvo aytant que tots los seus torts e les seus injuries que deven esser pagades, si hom troba bens seus, de que s'pusquen pagar. Empero, si la nau o leny sera carregada de tot o de la major partida abans que l'senyor de la nau muyra, ella es tenguda de anar e de seguir lo viatge a aquell mercader

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[1] *Si algun*] Esp. 124, chapter ccxxvi. here commences with the Rubric " Si algun senyor de nau o " de leyn aura nolieiada la sua " nau." The words "E morra" have been added in black ink.

[2] *nau o leny*] Esp. 124 omits after " leny " the words "sia carregat," which are found in all the early printed editions, but which are evidently redundant, and have been omitted by Capmany and by Pardessus.

tered, until the next of kin, or those who have entrusted the commissions to that merchant who is dead, have come there, or their agent for them. Nevertheless, if they be goods which it may be doubted that they may spoil, they ought to be sold, and the money which may be had for them ought to be put into a place, that at any hour at which they, who ought to have it, may arrive, they may have it themselves or by their agent, without any dispute, after it is certain that those who ought to have them, or their agent, has arrived to claim them. And for those reasons above mentioned this chapter was made.

Chapter ccxix. Of a ship chartered, and the managing owner dying before it is laden.

If any managing owner of a ship or vessel shall have let his ship or vessel to any merchant, if the managing owner of the ship or vessel shall die before the ship or vessel is laden either in whole or in part, that ship or vessel to whose managing owner that misfortune shall have happened, as above said, is not bound to go upon the voyage, unless the part-owners with the next of kin of the deceased shall agree that the said ship or vessel may go, and unless all the part-owners or the greater part were present at the chartering, and that all or one of them was bound to that merchant who had chartered that ship or vessel: for this reason, since a dead man has not and cannot have the ownership of anything of this world, saving so much that all the wrongs and the injuries which he has done should be paid, if one can find effects of his to pay them.[1] Nevertheless, if the ship or vessel shall have been laden in whole or in the greater part before the managing owner of the vessel died, she is bound to go and perform the voyage for that merchant

[1] *pay them*] The same doctrine is laid down in chap. ccxviii.

qui nolieiada la haura, perco car los personers qui en la nau o leny hauran part, ne encara los proismes d'aquell senyor qui mort sera, no hi hauran mes algun contrast mentre que ella carregava, e per aquesta rao que desus es dita la nau o lo leny es tengut de seguir lo viatge. E encara los personers hi son tenguts de metre ab los proismes de aquell que mort sera un homme, qui sia o tenga loch de senyor, e encara obligat a aquell mercader de totes convinences e empreniments, que aquell, qui mort es, fara o era, si viu fos; perco car ells vehien, que aquell qui era senyor de la dita nau era malalt e cuytat, e ells no contrastaren en res com la nau o leny carregava. Empero, si los proismes d'aquell qui mort sera, o los personers de aquell, qui la donchs, mentre viu era, era senyor de aquella nau o leny, digueren e contrastaren a aquell mercader, qui la nau o leny havia nolieiat, que ell no carregas ne faes res carregar, perco car ells havien dupte que aquell qui malalt era, qui era senyor, que moris, e si ell moria, que aquella nau o leny anas en aquell viatge: si aquell mercader no s'volra star del carregar, perco que ells li diran o li hauran dit, "Si lo senyor d'aquella "nau o leny, qui la donchs era, morra, aquella "nau o leny no y deu ne es tenguda de anar en "aquell viatge," ne encara los personers, ne los proismes o hereus de aquell senyor, qui mort sera, no son de res tenguts a esmena a fer a aquell mercader qui la nau o leny havia nolieiat e encara carregat, per dan que ell ne sostenga, pus que per dit ne per lo renunciament, que ells hi haguessen fet, no se n'era volgut star. Empero, si la nau o leny haura carregat e haura feta vela e partida sera de aquell loch on haura carregat axi es a entendre, que l'senyor de la nau sia ab ell, sia que sia sa o malalt, si lo senyor

who has chartered her, because neither the part-owners, who had a share in the ship or vessel, nor the next of kin of the deceased have made any objection whilst he was loading her, and for the reason above stated the ship or vessel is bound to perform the voyage. And further, the part-owners are bound with the next of kin of the deceased to put on board a man who shall fill the place of the managing owner, and shall be further liable to those merchants for all the agreements and undertakings which the deceased was or would be liable to if he were alive, because they saw that he who was the managing owner of the ship was ill and in danger, and they did not raise any objection when he was loading the ship. Nevertheless, if the next of kin of the deceased and the partners of him, who, whilst he was alive, was managing owner of that ship or vessel, shall have said and objected to that merchant, who has chartered that ship or vessel, that he should not load nor cause to be loaded anything, because they had doubts that he who was ill and was managing owner might die, and that if he should die, they had doubts about the ship or vessel going on that voyage; if that merchant shall not stay the loading, although they have said or caused to be said to him, "If the managing owner of the ship or vessel who was "sick at the time shall die, the ship or vessel ought not "and is not bound to go on that voyage," neither the part-owners nor the next of kin nor the heirs of the deceased managing owner are bound in any respect to make compensation to that merchant who has chartered the ship or vessel, and has further loaded her, for any loss which he may sustain because he was not willing to stop upon their saying that they renounced the voyage. Nevertheless, if the ship or vessel shall have loaded a cargo and have set sail and set out from the place where she was laden, that is to say, when the managing owner of the ship was with her, whether he was sound in health or sick, if the managing owner of

de la nau o del leny morra, gens per la sua mort no s'deu star que la nau o leny no deia seguir lo viatge, en aquesta guisa empero, que si en la nau o leny haura personer algu, o algu qui fos proisme de aquell qui mort sera, qui era senyor mentre que viu era, aquell deu esser levat per senyor, si los mercaders e l'notxer e l'escriva veuran e conexeran ab tot lo cominal de la nau, que suficient hi sia algu de aquells, sia levat per senyor. E si ells veen que algu de aquells no y sia suficient, e en la nau haura panes o proer algu que suficient hi sia, lo un d'aquells deu esser mes per lochtinent de senyor: empero, es axi a entendre, tan solament en aquell viatge, lo qual qui mort sera havia fermat a aquell mercader, e no pus. E encontinent, fet aquell viatge, deven tornar aquella nau o aquell leny en poder dels personers e dels proismes d'aquell qui mort sera, qui la donchs era senyor, e l'escriva es tengut de retre compte a ells axi del guany com de la perdua si fet hi sera, tot en axi com fera a aquell, qui la donchs era senyor con la nau o leny parti d'alla, on havia carregat, e eren sos proismes e sos personers, si viu fos. Empero, si la nau havia carregat en algun loch on proisme ne personer no hagues algu, ells la deven tornar, fet lo viatge, en aquell loch on la leveren, si aquell loch salvo sera. E si lo loch salvo no es, ells la deven metre e tornar en loch salvo, e l'escriva ab lo notxer ensemps deven fer una carta e trametre en aquell loch, on sapien que sien o deian esser los seus proismes e los seus personers d'aquell qui mort sera, ab misatge cert, que ells que venguen a retre aquella nau o leny, perco com aquell qui senyor era es mort. E lo escriva e lo notxer no la deven desemparar ne de-

the ship or vessel shall die, his death should not be any obstacle to the ship or vessel proceeding on the voyage, in this manner however, that if there shall be in the ship or vessel any part-owner or any one who is next of kin to the deceased, who was managing owner when alive, he ought to be appointed managing owner, if the merchants and mate and ship's clerk shall find and adjudge with all the ship's company that he is sufficiently qualified to be appointed managing owner. And if they see that he is not sufficiently qualified, and there is in the ship any mariner of the poop or of the forecastle who is sufficiently qualified, he ought to be appointed lieutenant of the managing owner; it is however to be understood, only for that voyage, which the deceased had agreed to with those merchants, and not afterwards. And immediately upon the conclusion of that voyage they ought to return that ship or that vessel into the power of the part-owners or of the next of kin of the deceased, who was formerly managing owner, and the ship's clerk is bound to render an account to them as well of the gain as of the loss, if any has been made, precisely as he would have done to him, if he were alive, who was formerly managing owner when the ship or vessel sailed from the place where she took on board her cargo, and where his next of kin or partners were. Nevertheless, if the ship has loaded her cargo in any place where there was no kinsman nor partner of the deceased, they ought to return with her when the voyage is concluded to that place from which they set out, if that place shall be safe. And if that place be not safe, they ought to return with her to a safe place, and the ship's clerk with the mate together ought to prepare a written notice and transmit it by a sure messenger to that place where they know that his next of kin or partners ought to be found, that they may come and receive that ship or vessel, because he who was the managing owner is dead. And the ship's clerk and the

renclir, tro fins que recapte haien hagut dels proismes e dels personers de aquell qui mort sera, qui la donchs era senyor; encara mes, que aquells sien satisfets e entegrats di tots los lurs maltrets e de totes les fatigues que oides e preses per rao d'aquella nau o leny a salvar. E per les raons desusdites fo fet aquest capitol.

Capitol ccxx. De nau nolieiada sens temps determinat.

Si algun[1] mercader o mercaders nolieiaran nau o leny ab carta o ab testimonis, e no hauran oit que aquells mercaders deian haver espatxat aquella nau o leny, que ells hauran nolieiat, a dia cert o a temps sabut, si los mercaders laguiaran, que ells no expatxen aquella nau o leny que ells nolieiat hauran, axi com lo senyor de la nau volria e querria, ab que per culpa dels dits mercaders no romangues, los mercaders no son tenguts a aquell senyor de la nau o leny, que ells axi hauran nolieiat, de messio que ell ne faca de alguna esmena a fer, perque tot senyor de nau o leny deu guardar ja com nolieiara sa nau o son leny, perco que a dan no li pusca tornar. Empero, si los dits mercaders nolieiaran alguna nau o algun leny axi com desus es dit, e ells no la espatxaran axi com ells mils poran, e per culpa d'ells romandra, si lo senyor de la nau o leny pora provar e mostrar que per culpa d'ells haura sostengut algun dan, los mercaders li son tenguts de esmenar e restituir, pusque per culpa d'ells lo haura sostengut. Encara mes, sia que aquella nau o leny, que com desus es dit sera nolieiat, deia carregar en aquell loch on lo contracte sera fet per rao del nolieiar, o sia que deia anar carregar en altre loch; si los mercaders se poran escusar per justa rao o per just impediment, que ells no pusquen donar ne livrar aquell carrech en aquell viatge que ells promes li havien de donar, pus per culpa d'ells

[1] *Si algun*] Esp. 124, chapter ccxxvii commences here with the Rubric "Si alcun mercader o mercaders noliejaran nau o leyn ab carta o ab testimonis."

mate ought not to abandon nor leave the vessel until she has been taken charge of by the next of kin or by the partners of him who is dead, who was managing owner: still further, they ought to be satisfied and indemnified for all the trouble and all the fatigue which they have taken and undergone by reason of that ship or vessel to preserve her. And for the reasons above said this chapter was made.

Chapter ccxx. Of a ship chartered for no definite time.

If any merchant or merchants shall freight a ship or vessel by charter-party, or before witnesses, and it has not been understood that those merchants ought to despatch that ship or vessel which they have freighted on a certain day or by a given time, if the merchants lag behind the time, and they have not despatched that ship or vessel, which they have freighted, according as the managing owner of the ship would wish and require, without it being the result of the fault of the said merchants, the merchants are not bound to that managing owner of the ship or vessel which they have freighted, to make any compensation for the expense which he has to make, because every managing owner of a ship or vessel ought to beware, when he shall let his ship or vessel for freight, that it does not turn to his loss. Nevertheless, if the said merchants shall freight any ship or vessel as above said, and they shall not have despatched it as they best could, and by their fault it has sustained any loss, the merchants are bound to compensate and to make it good, since the ship has sustained it through their fault. Still more, whether it be that the ship or vessel, which has been freighted as above said, ought to load in that place where the contract was made with the object of freighting her, or she ought to go to load at another place, if the merchants can excuse themselves for just reasons or for a just impediment, that they could not provide and deliver that cargo for that voyage, which they had promised to do, inasmuch as it

no sia, ells no li son de res tenguts pus que per culpa d'ells no romandra. Mas empero, si l's dits mercaders trobaran millor mercat de nolit, que ells no havien d'aquella nau o leny que ells nolieiat havien, e ells nolieiaran altra nau o leny, per rao de millor mercat que ells ne hauran, e ells falliran e metran en falla aquella nau o leny, que ells primerament havien nolieiat, per rao del millor mercat que ells trobaran, ells son tenguts de donar e de retre tot dan e tota messio, que per culpa d'ells haura feta e sostenguda lo senyor de la nau o leny, que ells primer havien nolieiada; e encara de donar aquell carrech que ells li hauran nolieiat; e si dar ells no li volran, ells li son tenguts de donar e de pagar tot aquell nolit que ells li prometeren, com lo nolieiaren, pus que per culpa d'ells lo li hauran tolt, e per rao del millor mercat, que ells hauran ab altre, e per als no; e perco es rao, que qui en engan e frau va o vol anar de algu, que en res culpa no li haia, que de tot li torn desus. En aquella metexa manera, que desus es dit, es tengut lo senyor de la nau o leny, qui axi com desus es dit haura nolieiada la sua nau o leny a mercaders, si ell la nolieiara a altres mercaders per rao del millor nolit que ells li donassen, que no fahien aquells qui primer lo havien nolieiat, e n'hauran a fer alguna messio o n'sostendran algun dan per culpa de aquell senyor de aquella nau o leny, que ells nolieiat hauran, ell los es tengut de tot a restituir, pus per culpa d'ell l'hauran sostengut. Encara, deu levar aquell carrech que havia d'ells nolieiat, si la nau o leny ne sabia esser venuda, perco com es rao que los senyors de les naus o dels lenys sien e deven esser tenguts e obligats als mercaders, qui nolieiat hauran en totes coses e per totes, axi com los dits mercaders

was not from their fault, they are not liable for anything since it did not result from their fault. But nevertheless, if the said merchants shall discover a cheaper bargain of freight than they had made with that ship or vessel which they had freighted, and they hire another ship or vessel by reason of the cheaper bargain of freight which they have discovered, they are bound to pay and render every loss and every expense, which the managing owner of the ship or vessel, which they have first freighted, has sustained from their fault, and further to supply the cargo which they have freighted; and if they are not willing to supply it, they are bound to give and pay as much freight as they promised when they freighted the ship, inasmuch as they have deprived him of it through their own fault and by reason of a cheaper bargain, which they have made with another, and for no other reason; and because it is reasonable, that he who attempts or wishes to attempt to cheat or defraud another, who is in no respect to blame towards him, should support everything. In the very same manner as above described, the managing owner of a ship or vessel, who has let his ship or vessel to merchants as above said, is liable, if he shall let it to other merchants in consideration of a higher freight[1] which they will pay him, than those will pay who first freighted the vessel, and should they have to incur any expenses or to sustain any loss through the fault of that managing owner of that ship or vessel, which they had freighted, he is bound to make good everything to them, since they have incurred the loss through his fault. Further, he ought to take on board the cargo which he has accepted on freight from them, even if the ship or vessel has to be sold, because it is reasonable that the managing owners of ships and vessels should be and ought to be bound and liable to the merchants who have freighted them in all things and for all matters as the said merchants are bound to them.

[1] *a higher freight*] This case has been discussed in chap. xlv.

son tenguts a ells. E perco que desus es dit fon fet aquest capitol.

Capitol ccxxi. De nau nolieiada, que per impediment no pot fer lo viatge.

Si algun[1] mercader o mercaders nolieiaran nau o leny en algun loch, sia que la nau o leny que ells nolieiat hauran deu carregar en aquell loch metex, on lo contracte del nolit sera estat fet, o sia que deia anar carregar en algun altre loch, si, stant aqui en aquell loch on sera estat nolieiat, vendra impediment de senyoria, (posem, que aquella nau o leny, qui nolieiat sera, devia carregar en aquell loch on lo contracte del nolit sera stat fet,) si lo senyor d'aquella nau o leny que aquells mercaders, qui desus son dits, hauran nolieiat, los dira e l's desmostrara que ells que damnen e que desfacen aquella carta, que entre ells per rao de aquell nolit sera estada feta, e que l'absolguen, e que ell puga anar a fer son prou en algun loch ab altres mercaders; si aquells mercaders qui nolieiat lo hauran, no volran que aquella carta que entre ells es estada feta per rao d'aquell nolit, que s'damne ne que s'desfaca, ne encara ells no l'volran absolre, ans li diran que ell no s'congoix, que ells cuyden acabar, e son certs que ells li daran lo carrech que nolieiat li hauran si ells acabar poran, que ells li donan aquell carrech qui nolieiat li hauran; los dits mercaders no son tenguts a aquell senyor d'aquella nau o leny, que ells nolieiat hauran, de res als, sino de fer tota la messio que ell haura feta de aquell dia avant que ell los demana que l'absolguessen. E aco son tenguts de fer menys de tot con-

[1] *Si algun*] Esp. 124, chapter ccxxviii., "Si algun mercader o mercaders noliejaran nau o leyn en algun loch."

And for the reasons above set forth this chapter was made.

Chapter ccxxi. Of a ship chartered, which by reason of some impediment cannot complete the voyage.

If any merchant or merchants shall freight a ship or vessel in any place, whether it be that the ship or vessel which they have freighted ought to load in that same place where the contract of affreightment has been made, or whether it ought to go to load in another place, if whilst the vessel is staying there in the place where it was freighted, an impediment should be raised on the part of the local authorities[1] (let us suppose, for instance, that the ship or vessel, which has been freighted, ought to load in that place where the contract of affreightment has been made,) if the managing owner of that ship or vessel which those merchants above mentioned have freighted, shall say and declare to them, that they should revoke and abrogate the charter-party, which has been made between them on the subject of the affreightment, and that they should release him, in order that he may go and make his fortune in another place with other merchants; if those merchants who have hired his vessel, are not willing that the charter-party, which has been made between them on the subject of the affreightment, shall be revoked and abrogated, and further they do not wish to release him, on the contrary shall say that he should not trouble himself, that they intend to complete their contract, and are certain that they will supply him with the cargo which they have freighted; if they can fulfil their contract and can give him the cargo which they have freighted, the said merchants are not liable to that managing owner of the ship or vessel, which they have freighted, for anything else except to make good all the expense which he has incurred from that day when he asked them to release him. And this only they

[1] *local authorities*] The contingency of an embargo has been discussed in chapters xxxv., xxxvi., xxxvii., and xxxviii., and it is further treated of in ch. ccxxxvii.

trast; perco, car no es culpa lur, que empediment es de senyoria; e encara perco, car ells li livraren lo carrech que nolieiat lo havien. Empero, si ells aquell carrech o altre en loch d'aquell dar no li poran, ells li son tenguts de fer tota la messio e tot lo dan e tot lo destrich, que ell ne sostendra e sostengut ne haura. Empero es axi a entendre, que aquell dan e aquell destrich deu esser mes en coneguda de dos bons homens qui sapien de la art de la mar; perco car los dits mercaders son stats axi volenterosos de donarli aquell carrech que ells nolieiat li hauran, e per res, que ells hi hagen pogut fer, no sera romas. E qualsevol pati lo senyor de la nau o leny fara ab los mercaders, aquell pati meteix deven esser los mariners. Empero, si la nau o leny devra anar carregar en algun loch abans que l'senyor de la nau o leny partesca d'aquell loch on lo contracte del nolit sera stat fet, e ans qu'ell partesca d'aqui, lo empediment hi sera vengut, si los mercaders diran a aquell senyor d'aquella nau o leny, que ells nolieiat hauran, que ell no stiga per paor de aquell impediment de anar alla on deu carregar, que ells son certs e no han paor ne dubte, que per aquell impediment ell ne res d'ells sia detengut ni detardat; si sobre aquestes raons desusdites lo senyor de la nau o leny, que ells nolieiat hauran, ira ab aquella sua nau o leny en aquell loch on lo carrech devia levar, en axi com era estat nolieiat; si los dits mercaders aquell carrech donar no li poran, ells son tenguts de fer tota la messio que per culpa d'ells hag per l'impediment, e encara de

are bound to do without any dispute; because it is not their fault that there was an impediment on the part of the local authorities; and further because they have supplied the cargo which they have promised. Nevertheless, if they cannot supply that cargo or another in its place, they are bound to make good all the expense and all the loss and all the prejudice which he shall sustain or may have sustained. Nevertheless it is to be understood, that such loss and such prejudice ought to be submitted to the award of two Prudhommes, who are skilled in the business of navigation, because the said merchants have been desirous to supply him with the cargo which they have freighted, and it has not been kept back from any cause which they could have controlled. And whatever compact the managing owner of the ship or vessel shall make with the merchants, the mariners [1] shall be included in the same compact. Nevertheless if the ship or vessel ought to go to load in any place, and before the managing owner of the ship or vessel shall depart from that place where the contract of affreightment has been made, the impediment shall have supervened, if the merchants shall say to that managing owner of that ship or vessel, which they have freighted, that he ought not to be prevented by fear of that impediment from going thither where he ought to load, that they are certain and have no fear nor doubt that that he or anything of his will be detained or delayed there, if upon the abovesaid reasons the managing owner of the ship or vessel, which they have freighted, shall go with his ship or vessel to that place where he ought to take in his cargo according to the contract of affreightment; if the said merchants cannot furnish him with that cargo, they are bound to bear all the expenses, which through their fault he has incurred from the

[1] *the mariners*] The same principle is laid down in chapters cxlvii. and cxc.

donar e de pagar tot aquell nolit lo qual ells li eren tenguts de donar, si lo carrech los hagues portat, que no es culpa de ell com ell portat no l'hos ha. E aco no deu esser mes en laor de bons homens, si lo senyor de la nau o leny no u vol; perco, car segons que en un capitol es contengut, tota nau o leny, pusque haura feta vela, deu haver tot son nolit, sens tot contrast. Empero, si lo senyor de la nau o leny ne volra fer alguna avinenca, ell la n'pot fer, e deven hi esser los mariners. Empero si com los dits mercaders nolieiaren aquella nau o leny, era ja lo empediment en aquell loch, e lo senyor de la nau o leny dix e demostra a aquells mercaders, ja ells per que nolieiaven, pusque empediment hi havia, e ells li diran que pens de nolieiar e que no se n'estiga per paor del empediment, qu'ells lo n'guardaran de dan, e sobre les dites raons ells nolieiaran, ells son tenguts a aquell senyor de aquella nau o de aquell leny, que axi com desus es dit hauran nolieiat, de donar e de restituir tot dan e tot destrich e tota messio, que ell haura fet ne sostengut per culpa d'ells, que axi com desus es dit lo nolieiaren. E lo senyor de la nau o leny es tengut als dits mercaders en totes e aytantes guises com los mercaders son als senyors de les naus o lenys; e encara mes, en moltes de guises que los mercaders ne son tenguts als senyors de les naus. E per les raons desusdites fo fet aquest capitol.

Capitol ccxxii. Com mariner no deu exir de

Si algun[1] senyor de nau o leny dara paraula a algun mariner per alguna rao, no se n'deu pas exir tan solament per lo dit del senyor de la nau o leny, tro fins que l'senyor de la nau o leny li haia levat o

[1] *Si algun*] Esp. 124, chapter ccxxix. commences here with the Rubric "Si alcun senyor de nau o de leyn dara paraula a alcun ma-riner."

impediment, and further to give and to pay all that freight which they were bound to give, if he had carried the cargo, inasmuch as it is not from his fault that he has not carried it. And this ought not to be submitted to the award of the Prudhommes, if the managing owner of the ship or vessel do not wish it; because according to what is contained in a chapter,[1] every ship and vessel, as soon as it has set sail, ought to have all its freight without any dispute. Nevertheless, if the managing owner of the ship or vessel shall be willing to make any arrangement, he may do so and the mariners ought to be included in it. Nevertheless, if when the merchants freighted that ship or vessel, the impediment existed in the place and the managing owner of the ship or vessel said to those merchants, "why should they freight, since that "impediment existed?" and they replied that they were resolved to freight and would not be prevented by fear of the impediment, that they would guard him from all loss, and upon this understanding they have freighted his vessel, they are liable to that managing owner of the ship or vessel, which they have freighted as aforesaid, to pay and restore all the loss and all the prejudice, and all the expense, which he shall have borne and sustained from their fault, since they have as above said freighted his vessel. And the managing owner of the ship or vessel is bound to the said merchants in all and in as many ways as the merchants are bound to the managing owner of the ship. And for the reasons above said this chapter was made.

Chapter ccxxii. When a mariner ought not to leave the ship

If any managing owner of a ship or vessel shall order a mariner to leave the ship for any reason, he ought not to leave it upon the mere order of the managing owner of the ship or vessel, until the managing owner of the ship or vessel has taken away or caused to be taken

[1] *a chapter*] The chapter here referred to is probably chapt. xxxix.

nau per paraula del senyor.

fet levar lo pa e la vianda davant. E si l'mariner se parteix de la nau o leny tan solament per la paraula que l'senyor de la nau o leny li haura donada, menys que no li haura levada la vianda, lo senyor de la nau o leny no li es tengut de res a respondre per demanda que aquell mariner li faca. Empero, si lo senyor de la nau o leny dara paraula a algun mariner, la paraula es a entendre, que li leu la vianda davant o la li faca levar, ans que l'viatge sia acabat ne fet, sens justa rao, ell li es tengut de pagar tot lo loguer que promes li hara o promes li es stat al temps que ell se acorda. E si lo mariner anava o era a cosiment, lo senyor de la nau o leny li es tengut de donar e pagar tot aquel loguer, que l'notxer e l'escriva diran per lur sagrament que aquell mariner haguera afanyat, si lo viatge complis. Encara mes, que si lo senyor de la nau lo lexara en loch estrany, si l'mariner romandre no y volra, lo senyor de la nau o leny es tengut que li do nau o leny e vianda, tro que aquell mariner sia tornat en aquell loch on lo senyor de la nau lo leva, o que se n'avenga ab ell, si lo mariner ne volra fer avinenca. Empero, si lo senyor de la nau o leny li dara paraula, axi com desus es dit, per alguna rao justa o per les condicions que en lo capital desusdit

away from before him his bread and his meat.[1] And if the mariner leaves the ship upon the mere order which the managing owner of the ship or vessel shall give him, without his having taken his meat away from before him, the managing owner of the ship or vessel is not liable to answer in any way to any claim which the mariner may make upon him. Nevertheless, if the managing owner of the ship or vessel shall give an order to any mariner, whereby it is to be understood that they shall take away or cause to be taken away from before him his meat, before the voyage shall be finished and completed, without just reason, he is bound to pay him all the wages which he has promised to him and which have been promised to him at the time when he engaged him. And if the mariner sails and is at the discretion[2] of the managing owner of the ship or vessel, he is bound to give and to pay him all those wages, which the mate and the ship's clerk shall say upon their oath that the mariner would have gained if he had completed the voyage. Still more, if the managing owner of the ship shall leave the mariner in a strange place, if the mariner does not wish to remain there, the managing owner of the ship or vessel is bound to find him a ship or vessel and food, until that mariner has returned to that place where the managing owner of the ship took him on board, or he may make an arrangement with him, if the mariner is willing to make an arrangement. Nevertheless, if the managing owner of the ship or vessel shall give him an order to leave the ship, in manner as above said, for some just reason and under the conditions which have been already stated and declared in the

upon the order of the managing owner.

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[1] *his meat*] An analogous rule is laid down in article xiv. of the Rolls of Oleron, in cases where a mariner has been quarrelsome, the master being required to take away the tablecloth from the mariner at table three times before he is at liberty to order him to leave the ship.

[2] *at discretion*] This mode of hiring mariners is treated of in chapter clxxxi.

son ja dites e certificades, lo senyor de la nau o leny no li es tengut que li pag lo loguer ne que li do nau ab que se n'torne, ne encara vianda. E per les raons que desus son dites, tot senyor de nau o de leny deu gardar, com dara paraula a algun mariner, que la li do ab justa rao, perco que a dan no li pusca tornar, e l's mariners deven guardar atresi, ja com pendran paraula e com no, perco que alguna justa rao no l's puga esser posada desus, qui l's pogues tornar a dan. E perco fon fet aquest capitol.

Capitol ccxxiii. Mariner que fugira.

Si algun[1] mariner fugira a nau o a leny, pus que haura rebut son loguer en algun loch, ans que ell no haura fet aquell servey, que ell fer promes com s'y acorda, es axi a entendre que ell fugira, ans que la nau no haura acabat ne fet aquell viatge en que ell sera acordat, e encara lo mariner desusdit hi sera anat en partida, aquell mariner aytal es tengut de retre lo loguer, que rebut haura, a aquell senyor de aquella nau o leny de qui ell l'haura rebut, sens tot contrast; e de servey que ell haia fet no deu haver res, pus que en axi sera fugit, com desus es dit; ans, en qualque loch que ell sera aconseguit, deu esser pres e estar tant en la preso, tro que haia retut al patro de la nau lo loguer que l'dit mariner havia rebut e tots dans e greuges que l'senyor de la nau haia sostengut; e sia n'cregut lo senyor de la nau per sa simple paraula e sens testimoni. E per les raons desusdites fo fet aquest capitol.

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[1] *Si algun*] Esp. 124, chapter ccxxx. commences here with the Rubric "Si algun mariner fugira a nau o leyn, pus aura aut son loguer."

abovesaid chapter,[1] the managing owner of the ship or vessel is not bound to pay the wages nor to find him a ship in which he may return, nor even meat. And for the reasons above said every managing owner of a ship or vessel ought to beware, when he gives a mariner an order to leave the ship, that he does it for a just reason. in order that it may not turn to his loss, and the mariners ought to beware as well on their part, how they accept their discharge by parole and how not, in order that some just reason may not be alleged against them, which may turn to their prejudice. And for this reason this chapter was made.

Chapter cexxiii. Of the mariner who runs away.

If any mariner shall run away from his ship or vessel, after he has received his wages in any place, before he has completed the service, which he promised to perform when he engaged himself, that is to say, if he runs away before the ship has made and finished the voyage for which he has engaged himself, and if, further, the mariner above said has sailed on part of the voyage, such mariner is bound to pay back the wages which he has received, to that managing owner of the ship or vessel from whom he has received it, without any dispute; and he ought to have nothing far the services which he has performed, since he has run away in the manner aforesaid: on the contrary, in whatever place he may be sued, he ought to be seized and remain in prison until he has restored to the managing owner of the ship the wages which the said mariner has received, and all the losses and mischiefs that the managing owner has sustained; and the managing owner shall be believed upon his mere word and without witnesses. And for the reasons above said this chapter[2] was made.

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[1] *above said chapter*] Chapter xxxix is probably referred to.

[2] *chapter*] This chapter is almost a repetition of what has been stated in chapters cxii. and cxiii.

Capitol ccxxiv. De carrech de gra pres sens mesura.

Si alguns[1] mercaders nolieiaran alguna nau o leny a algu, e los dits mercaders carregaran aquella nau o aquell leny, que ells nolieiat hauran, de gra, si lo senyor de la nau o del leny que ells nolieiat hauran, axi com desus es dit, no rebra a mesura ell ne hom per ell aquella gra, que aquells mercaders metran en aquella sua nau o leny, si no tan solament que ell se n'fiara en la paraula que l's mercaders o hom per ells li diran; si aquell senyor de la nau o leny volra mesurar o fer mesurar aquell gra, que en la sua nau o leny sera stat mes, e ell haura portat en aquell loch on havia a descarregar, ell ho pot fer, que mercader algu no li u pot vedar ne contrastar. E com lo dit senyor de la nau o leny haura mesurat o fet mesurar, si ell troba mes que los dits mercaders o hom per ells no li havien dit ne demostrat o per falta de mesurar, o per rao que l's dits mercaders li volguessen fraudar lo nolit que ell ne devra haver, o sia que l'gra haia fet algun creximent per alguna rao, per qualsevol de les raons desusdites que lo creix sera fet, lo senyor de la nau o leny deu haver son nolit axi del creix com d'aquell que los mercaders li havien manifestat o hom per ells. E lo creximent que en aquell gra sera trobat se deu partir per eguals parts entre tots los mercaders: e deu ne haver quascu sa part, segons la quantitat del gra que en la nau o leny hauran mes. E quascu dels dits mercaders es tengut de pagar nolit al senyor de la nau o leny axi, be del creix com de aquell que nolieiat li havia; perco car es rao, que pur los mercaders fan de lur prou, que l'senyor de la nau o leny no faca san don. Encara per altra rao, perco com lo senyor de la nau ne hom per ell no l'rebe a compte. Mas empero, si lo senyor de la nau o leny o hom per

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[1] *Si alguns*] Esp. 124, chapter ccxxxi. commences here with the Rubric "Si alguns mercaders nolieiaran alguna nau o algun leyn."

Chapter ccxxiv. Of a cargo of grain laden without measuring it.

If any merchants shall freight any ship or vessel, and the said merchants shall load that ship or vessel, which they have freighted, with grain, and if the managing owner of the ship or vessel which they have freighted as above said, has not himself nor by his agent received by measure the grain which those merchants have put on board his ship or vessel, inasmuch as he has trusted simply to the word of the merchants or of their agent, if that managing owner of the ship or vessel wishes to measure or have measured that grain which has been put on board his ship or vessel, and has carried it to the place where he will have to discharge it, he may do so, and no one of the merchants can forbid or object to it. And when the said managing owner of the ship or vessel shall have measured it or caused it to be measured, if he finds more than the said merchants or their agent has said and declared, either from default in measuring it, or by reason that the said merchants have wished to defraud him of freight which he ought to have, or because the grain has acquired greater bulk from some cause, for whatever of the aforesaid reasons the bulk may be greater, the managing owner of the ship or vessel ought to have his freight of the increased bulk as well as of that which the merchants or their owners have declared. And the increased bulk which shall be found ought to be divided in equal portions amongst all the merchants; and each ought to have his share according to the quantity of grain which he shall have put on board of the ship. And each of the said merchants is bound to pay freight to the managing owner of the ship or vessel as well for the increased bulk as for that which he has freighted; for it is reasonable as the merchants make gain by it, that the managing owner of the ship or vessel should not incur loss by it. Further, for another reason, because neither the managing owner of the ship nor his agent have received it by tale. But nevertheless, if the managing owner of the ship or vessel or his agent has

ell lo haura mesurat o fet mesurar, e l'haura rebut a compte, si en aquell gra que lo senyor de la nau o leny o hom per ell haura mesurat o fet mesurar, e l'haura rebut a compte, si algun creix hi sera trobat, d'aquell creix no son tenguts los mercaders de pagar res de nolit; perco car lo senyor de la nau o leny no se n'volgue fiar en lo dit ne en la fe dels mercaders. E si Deu los fa alguna gracia o algun be, que s'sia lur, com si lo senyors de la nau o leny se n'fos fiat en la fe dels mercaders, haguera part en lo profit que Deu hi haguera donat. En axi be justa rao es, que aquell creix que Deu hi ha donat, que dega esser dels mercaders, pus que lo senyor de la nau no se n'volgue en ells fiar. Empero, si lo senyor de la nau fara mesurar e l'rebra a compte, si los mercaders alguna falla y trobaran, lo senyor de la nau o del leny los n'es tengut de esmena a fer. Empero, es axi a entendre, que deu esser guardada la natura d'aquell gra, perco com hi ha natura de gra, que may no torna a la mesura que hom lo rebra. Empero si lo senyor de la nau o leny o hom per ell sera al mesurar, mas pas gens ell ne hom per ell no l'mesuraran per si, ne l'rebran a compte, ans se n'fiaran en fe dels mercaders, en aquell creix aytal deu haver lo senyor de la nau o leny son nolit. Encara mes, si menyscap s'y troba, no n'deu esser tengut, pus que ell ne hom per ell no l'haura mesurat ne fet mesurar, ne l'haura pres a compte. E per les raons desus dites fo fet aquest capitol.

Capitol ccxxv. Condicions de nolit.

Si algun[1] senyor de nau o leny nolieiara la sua nau o leny a algun mercader o mercaders, e quant lo senyor de la nau o leny sera junt en aquell loch on ells devran descarregar, si entre ell e los mercaders no

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Si algun] Esp. 124, chapter ccxxxii. begins here with the Rubric "Si algun senyor de nau o de leyn noliejara la sua nau o l'seu leny."

measured it or caused it to be measured, and shall have received it by tale, if in that grain, which the managing owner of the ship or vessel or his agent has measured or caused to be measured, any increase of bulk shall be found, the merchants are not bound to pay any freight for that increase, because the managing owner of the ship or vessel has not trusted the word or the assurance of the merchants. And if God gives them any grace or advantage, it should be theirs, since if the managing owner of the ship or vessel had trusted in the assurance of the merchants, he would have a share in the profit which God has given them. And accordingly there is just reason that the increase which God has given ought to belong to the merchants, since the managing owner of the ship was not willing to trust them. Nevertheless, if the managing owner of the ship shall have the grain measured and shall receive it by tale, if the merchants find any decrease, the managing owner of the ship or vessel is liable to make compensation to them. Nevertheless it is to be understood that the nature of the grain ought to be regarded, since there are some kinds of grain which never return the same measure with that at which they have been received. Nevertheless, if the managing owner of the ship or vessel or his agent shall be at the measuring, but neither he nor his agent has measured the grain for him, nor shall have received it by tale, on the contrary have trusted to the good faith of the merchants, the managing owner of the ship or vessel ought to have his freight of any such increase. Still further, if a deficiency shall be found, he is not responsible for it, since neither he nor his agent have measured or caused it to be measured, or accepted it by tale. And for the reasons above said this chapter was made.

Chapter ccxxv. Conditions of affreightment.

If any managing owner of a ship or vessel shall let his ship or vessel to any merchant or merchants, and when the managing owner of the ship or vessel has arrived at that place where they ought to discharge, if between him

haura empres dia cert o temps sabut, que los dits mercaders li deguen haver pagat lo nolit que ab ell hauran empres ; lo senyor de la nau o leny se n' pot retenir tota la roba, e que no leix descarregar, tro fins que l's mercaders li haien assegurat de pagar aquell nolit, que ab ell hauran empres lo dia que ells nolieiaren, encara dins dia cert o temps sabut. Empero, si entre lo senyor de la nau o leny e los mercaders haura empres dia cert o temps sabut, que ells li deguen haver descarregat e pagat aquell nolit, que ells li prometeren de donar, lo senyor de la nau o leny no l's deu ne pot contrastar que ells no descarreguen la roba lur. Salvo empero, que lo senyor de la nau o leny dubtas o hagues dubte que aquells mercaders fossen trafegadors o baratadors, e que s'temes que no li metessen lo seu nolit en barata, que ell lo pogues perdre. Empero, si los dits mercaders daran una seguretat al senyor de la nau o leny que ell haia saul lo nolit seu, ell los deu lexar descarregar tota lo lur roba. E si per ventura los dits mercaders diran al senyor de la nau o leny, ell si vol pendre de aquella roba meteixa que ell haura portada, a aquell preu que ells la porien vendre o que val en aquell loch on ell la deu descarregar, tant deu descarregar tro que ell haia compliment de paga al nolit, que ells li prometeren de donar, si lo senyor de la nau o leny se vol, ell ho pot fer, mas los dits mercaders no l'ne poden forcar. E si lo senyor de la nau o leny la pendra per sa

and the merchants there has not been arranged a certain day or a given time, when the merchants ought to pay the freight which they have arranged with him, the managing owner of the ship or vessel may keep all their goods, and not allow them to unload, until the merchants have found security to pay that freight, which they have agreed to with him on the day on which they freighted the vessel, within a certain day and a given time. Nevertheless, if between the managing owner of the ship or vessel and the merchants a certain day or a fixed time has been agreed upon, by which day they ought to have discharged the cargo and paid the freight which they promised to pay, the managing owner of the ship or vessel ought not and cannot object that they should unload their goods; saving, however, if the managing owner or vessel doubts or has doubts that the merchants in question are swindlers or cheats, and that he fears that they will cheat him of his freight, and that he may lose it. Nevertheless, if the said merchants will give a security [1] to the managing owner of the ship or vessel that he shall have his freight safe, he ought to allow them to discharge all their goods. And if by chance the said merchants shall ask of the managing owner of the ship or vessel, if he will accept for his freight a portion of the very same goods which he has brought in his ship, at the price at which they can sell them, or which they are worth at the place where he ought discharge them, and if he will allow them to discharge so much until he has enough left to pay the freight which they have promised to give, if the managing owner of the ship or freight is willing, he may do so, but the said merchants cannot force him.[2] And if the managing owner of the

[1] *security*] According to chapter xv., the ship's clerk had in every case a right to require a pledge from each merchant on loading his goods equivalent to the amount of of the freight and expenses.

[2] *force him*] The obligation, however, was peremptory in cases where vessels were freighted to Alexandria or Armenia. Chapter cexxx.

autoritat, ell ho pot fer, e si ell y guanya, tot lo guany deu esser seu, e si y perdra, tota la perdua deu esser sua, que personer no li n'es de res tengut. Mas lo senyor de la nau o leny es tengut de donar part a sos personers de tot aytant, com ell haura de nolit. Empero, si los mercaders lexaran aquella roba al senyor de la nau o leny, que ell haura portada, per lo nolit que ells donar li deven, lo senyor de la nau o leny la ha a rebre e de res als no l's pot destrenyer. E si per aytal rao, com desus es dita, lo senyor de la nau o del leny ha a pendre aquella roba desusdita, personer algu no pot res dir ne contrastar, que ell haia a pendre axi be sa part de la perdua com del guany, si Deu li donava. E si per ventura lo senyor de la nau o leny haura portada quantitat per lo nolit que ell ne deu haver, e aco haura a fer per manament e per destret de la senyoria del loch on ell sera, si en aquella roba, que ell axi com desus es dit haura haguda a pendre, se perdra o s'guanyara, personer algu no s'pot ni s'deu abstrer que ell no haia a pendre sa part, axi be del guany com de la perdua. Encara mes, si los personers diran e empendran ab lo senyor de la nau o leny, que ell en qualque part que ell vage o venga, que ell totavia esmerc e puga esmercar tot co que del nolit, que ell rebra, le sobrara; e si los personers tots o la major partida diran o empendran ab lo senyor de la nau co que desus es dit, si ells guanyen o perden, de co que lo senyor de la nau o leny haura esmercat, de allo que del nolit li sera sobrat, deven pendre lur part axi be de la perdua com del guany, si Deu n'y dava; e en res los dits personers no n'poden contrastar al senyor de la nau, pus que per manament de tots o de la major partida ho haura fet. Encara mes, si lo senyor de la nau o leny haura

ship or vessel shall accept these goods by his own authority, he may do so, and if he gains, all the gain ought to be his, and if he loses, all the loss ought to be his; for no part-owner is bound in any way. But the managing owner of the ship or vessel is bound to give a share to the part-owners of all the freight which he shall have. Nevertheless, if the merchants shall leave all the goods in the hands of the managing owner of the ship or vessel, which he has brought in his ship, for the freight which they ought to pay him, the managing owner of the ship or vessel has to accept them, and cannot exact anything more from them. And if for such reason as is above stated the managing owner of the ship or vessel has to accept those goods, no part-owner can object or dispute in any way, for he must take his share of the loss as of the gain, if God gives it. And if by chance the managing owner of the ship or vessel shall have to take of the goods which he has brought a certain quantity for the freight which he ought to have, and has to do this by the order or injunction of the local authorities where he shall be, if in the goods which he, as above-said, shall have to take he shall lose or gain, no part-owner can decline to bear his part as well of the gain as of the loss. Still further, if the part-owners shall say and agree with the managing owner of the ship or vessel, that in whatever part he goes or comes he may and should employ all the surplus of the freight which he has received, and if the part-owners all or the greater part shall say and agree with the managing owner of the ship in manner above said, if they gain or lose with that which the managing owner of the ship or vessel has employed of the surplus freight, they ought to have their share of the loss as of the gain, if God gives it, and the said part-owners cannot dispute anything with the managing owner of the ship, since he has done it by the directions of all or of the greater part. Still further, if the managing owner of the ship or vessel has employed

esmercat algunes vegades co, que del nolit li sera sobrat, sens manament e sens sabuda de sos personers, si ell y guanyara, ells pendran lur part de aquell guany, si los dits personers ne li diran[1] ne li faran manament, que ell no esmerc co que del nolit li sobrara; e si ell ho fa, que ells pendran volenters del guany, si Deu lo y dona, e si perdua s'y esdevenia, que fos tota sua. E si los personers aco que desus es dit li diran o li manaran, e ultra lo manament que ells li hauran fet, ell no stara que no esmerc co que del nolit li sobrara, si en allo, en que ell haura esmercat co que del nolit li sera sobrat, Deu guany y dara, ell es tengut de donar part als personers de tot aquell guany, e si ell perdra, tota la perdua deu esser sua. E si per ventura lo senyor de la nau o del leny esmercara alguns viatges co que del nolit li sobrara, e los personers pendran part d'aco que Deu hi dara, e ells no diran ne faran lo manament que desus es dit al senyor de la nau o leny; si ell esmercara, axi com desus es dit, los dits personers son tenguts de pendre part axi de la perdua, com farien del guany, si Deu n'y dava, tro fins que ells li haguessen dit o fet lo manament, axi com desus es dit. E per les raons desusdites fon fet aquest capitol.

Capitol ccxxvi. De nau o leny qui estant en lo carregar

Si algun[2] senyor de nau o leny carregar devra en algun loch, e stant en lo loch on deu carregar, ans que ell haia carregat, metra s'leig temps e ell haura dubte, que mal temps se meta, si lo dit senyor de la

[1] *ne li diran*] MS. Espagnol 124 has "no li diran," but the negative particle seems out of place here, and is in conflict with the subsequent provision "e ells no diran ne "faran lo manament que desus es "dit," which occurs in the third following sentence commencing with "E si per ventura." M. Pardessus has adopted the affirmative particle "ne" in preference to the negative "no."

[2] *Si algun*] Esp. 124, chapter ccxxxiii. commences here with the Rubric "Si algun senyor de nau o "de leyn devra carregar en algun "loch."

several times the surplus freight which remained without the directions and without the knowledge of the part-owners, if he has gained, they shall have their share of that gain, if the said part-owners have given him directions that he should not employ the surplus freight, and that if he did so they would readily take the profit, if God gave any, but that if loss supervened it should be altogether his. And if the part-owners have said and directed as above said, and notwithstanding the directions which they have given, he has not hesitated to employ the surplus freight, if God shall give any profit in that which he has employed of the surplus freight, he is bound to give a share of that profit to the part-owners, and if he loses, all the loss must be his own. And if by chance the managing owner of the ship or vessel shall employ on several voyages the surplus freight, and the part-owners shall accept their part of that which God shall give them, and they shall not give the directions above mentioned to the managing owner of the ship or vessel; if he shall employ the balance of the freight in the manner above said, the said part-owners are bound to take their share equally of the loss as they would of the gain, if God gives it, as long as they do not give him the directions above mentioned. And for these reasons this chapter was made.

Chapter ccxxvi. Of a ship or vessel which is loading cargo, when a

If any managing owner of a ship or vessel ought to load in any place, and being in the place where he ought to load, before he has loaded his cargo such uncertain weather supervenes that he has fear of tempestuous weather, if the said managing owner of the ship or vessel

sobrevendra temporal.

nau o leny fara alguna messio, axi com es de logar exarcia per metre a la nau o leny a ormeiar, los mercaders, qui nolieiat lo hauran, no y son tenguts a metre, pus que no hauran res carregat, si donchs lo senyor de la nau o leny no haura empres lo dia que ells nolieiaren, que en tota messio que li hagues a fer a necessari de la nau o leny, si li venia per cas de ventura, que ells hi deguessen metre lur part. E si per ventura lo senyor de la nau o del leny haura carregat alguna quantitat de la roba, que ell levar devra, aquella quantitat, que carregada sera, deu pagar en tota messio, que lo senyor de la nau o leny haura a fer per lo cas de ventura que desus es dit, per sou e per livra ab la nau o leny ensemps; si donchs entre tots los mercaders o la major partida no sera empres, que si lo cas que desus es dit hi esdevenia, aquella roba qui roman en terra ajudas a aquella qui sera carregada. E si la nau o leny sera carregada de tot, si li vendra lo cas que desus es dit, tot lo cors de la nau o leny deu pagar ab la roba ensemps per sou e per livra. Empero es axi a entendre que aquella nau o leny sia be e suficientment exarciat, e que la exarcia que ell haura que sia ben bastant e suficient. E si la exarcia que aquella nau o leny portara o haura ab si, no li sera suficient, ne a menor d'ell, si lo cas desusdit li esdevendra, los dits mercaders ne la roba d'ells no li son tenguts de res a metre en aquella messio, que aquell senyor de aquella nau haura a fer per rao del cas desusdit, ans lo senyor de la nau o del leny es tengut als mercaders, que si ells sostendran algun dan o algun greuge per rao de aquella exarcia, que ell ab si portara, a restituir. Empero deu esser en axi entes,

shall incur any expense, as for instance in hiring tackle to enable the ship or vessel to be securely moored, the merchants who have freighted her are not bound to contribute, since they have not loaded any cargo, unless the managing owner of the ship or vessel has agreed with them on the day when they freighted his vessel, that in all the expenditure which he might have to make for necessaries of the ship or vessel, if they supervened from a case of misfortune, they should contribute their share. And if by chance the managing owner of the ship or vessel has loaded any quantity of goods, which he ought to take on board, that quantity, which has been loaded, ought to pay all the expense which the managing owner of the ship or vessel shall have to make for the case of misfortune abovesaid, by shillings and pounds together with the ship or vessel, unless it shall have been agreed between all the merchants or the greater part, that if the above casualty supervened, the goods which remained on shore should aid the goods which were laden. And if the ship or vessel shall be fully laden, if a casualty as above described shall supervene, the hull of the ship or vessel ought to pay together with the cargo by shillings and pounds. Nevertheless it is to be understood, that the ship or vessel shall be well and sufficiently apparelled, and that the apparel which it shall have is good enough and sufficient. And if the apparel which that ship or vessel shall carry shall not be sufficient for her, nor for a vessel less than her, if the above case of misfortune shall supervene, neither the said merchants nor their cargo is liable to contribute in any way to that expenditure, which that managing owner of the ship has made by reason of the aforesaid accident, on the contrary the managing owner of the ship or vessel is liable to the merchants, that if they shall sustain any loss or prejudice by reason of the apparel which he carries with him, he shall make it good. Nevertheless it ought to be understood that the said

tempest supervenes.

que los dits mercaders no sien creguts per lur simple paraula, ans deu esser mes en vista e en coneguda de dos bons homens de la mar, que ells que coneguen aquella exarcia si es suficient a aquella nau o leny o no: e qualsevol cosa que a ells ne sera vista per be, allo n'deu esser seguit; perco, que a les vegades e totes les demes, si qualque cas de ventura que esdevengues a alguna nau o leny, era mes en fe de alguns mercaders, totavia dirien ells que per culpa de la exarcia, que la nau o leny hauria, que no seria suficient, los seria esdevengut aquell dan, que ells havien suffert; e axi si la vista e la coneguda dels bons homens no era, totavia hi serien malcaents los senyors de les naus o lenys. E per los raons desusdites fon fet aquest capitol.

Capitol ccxxvii. De mestre d'axa e de calafats.

Segons[1] que en lo capitol desusdit declara e demostra dels mestres d'axa e dels calafats, qui hauran emparada alguna obra de fer, com son tenguts e obligats a aquell senyor, de qui la obra sera, e qui en poder la l's haura mesa, e del senyor aytambe qui la obra los haura livrada, de que es tengut els dits mestres, e de que no; mas en lo capitol desusdit no esclareix, ja si alguns dels dits mestres prometran de obrar ab algun senyor de nau o leny, si allo que promes li hauran no li volran attendre, de que li seran tenguts e de que no. E per les raons desusdites los nostres antichs, qui primer comencaren anar per lo mon, feren aquesta esmena, perco que entre los senyors de les naus e les mestres desusdits no pogues haver algun contrast, e digueren e declararen en axi, que tot mestre d'axa e tot calafat qui prometra de obrar a algun senyor de

[1] *Segons*] Esp. 124, chapter ccxxxiv. begins here with the Rubric "Sagons que en lo capitol desusdit declara e demostra."

merchants are not to be believed upon their simple word, on the contrary it should be submitted to the inspection and award of two Prudhommes of the Sea that they should decide whether that apparel is sufficient for that ship or vessel or not, and whatever thing shall seem well to them, that ought to be followed; because sometimes, and most frequently, if any case of misfortune which happens to a ship or vessel were to rest on the mere word of any merchants, they would under all circumstances say that this loss had supervened from the fault of the apparel which the ship or vessel had, that it was not sufficient, and so if there were no inspection and award of Prudhommes, the managing owners of the ships or vessels would be always sufferers. And for the reason above said this chapter was made.

Chapter ccxxvii. Of the carpenter and of the caulker.

It has been shown and declared in a previous chapter[1] concerning the carpenter and the caulker, who have undertaken to do any work, how they are bound and obliged to the managing owner whose work it is, and who has empowered them to execute it, and concerning the managing owner who has committed the work to them, for what he is responsible to the said master workmen, and for what not: but it is not at all declared in the said chapter, if any of the said master workmen shall promise to work for the said managing owner, if they do not observe what they have promised, for what they are liable, and for what not. And for the reasons above said our predecessors, who first commenced to voyage about the world, have made this amendment, in order that there may be no dispute between the managing owners of ships and the master workmen, and they have said and declared, that every carpenter and caulker, who shall promise to work for any managing owner of a

[1] *previous chapter*] Chapter viii. is probably the chapter specially referred to. Chapter ix. also treats of the duties of the carpenter and the caulker.

la nau o leny, e sia que faca preu o no ab ell, es mester que li u attena, pusque promes lo y haura. E si ell fer no u volra, es tengut de retre e de esmenar tot dan e destrich, que aquell senyor de aquella nau o leny, a qui ell promes haura d'obrar, pora metre en ver, que sostengut ne haia e encara ne espera a sostenir, salvo empero, que als sobredits mestres no u hagues vedat ni tolt empediment de Deu ne de senyoria. E per aquella rao meteixa, tot senyor de nau o leny qui prometra de livrar alguna obra a algu o alguns dels sobredits mestres, e no l's o attendra, ell los es tengut de donar los lur loguer, lo qual ab ells havia empres. E si per ventura entre ells preu algu fet no haura, lo senyor de la nau o leny, qui aquella falla los haura feta, los es tengut de donar tot aytant com altres pendran en los obres que obraran, esguardada empero la valor e bontat de l's sobredits mestres. E encara los es tengut de mes lo senyor de la nau o leny, qui aquella falla hauria feta als sobredits mestres, de restituir tot lo dan e tot lo destrich que los dits mestres poran en ver metre o mostrar, que ells ne hauran sostengut e n'esperen a sostenir, esguardat empero aquella obra que aquell senyor los haura promesa de livrar, si es poca o gran; e esguardat aytambe empero, que a aquell senyor de aquella nau o de aquell leny no u tolgues empediment de Deu o de senyoria. E per les raons desusdites fo fet aquest capitol.

Capitol ccxxviii. De servicial e de patro.

Si algun[1] senyor de nau o leny tendra ab si algun servicial a temps sabut, lo dit servicial es mester que attena totes convinences, que ab lo senyor de la nau haura empreses; e es rao, que axi com lo servicial es tengut que attena les convinences que ab lo senyor

[1] *Si algun*] Esp. 124, chapter ccxxxv. begins here with the Rubric "Si alcun senyor de nau o de "leyn tendra ab si algun servicial.

ship or vessel, whether he has settled a price or not with him, it is incumbent that he observe his promise. And if he will not do so, he is bound to restore and make good every loss or prejudice which that managing owner of the ship or vessel, to whom he has promised to work, can verify that he has sustained or further expects to sustain, saving however that no impediment of God or of the local authorities has forbidden or prevented the said master workman. And for this very reason every managing owner of a ship or vessel who shall promise to deliver any work to any of the aforesaid master workmen and shall not keep his promise, is bound to pay them their wages, which he has agreed to with them. And if by chance no price has been settled between them, the managing owner of the ship or vessel, who has made the default, is bound to give them as much as others receive for the work which they are performing, due regard however being had to the worth and skilfulness of the said master workmen. And further, the managing owner of the ship or vessel who has made the above default to the said master workmen, is bound to restore all the loss and all the prejudice which the said master workmen may be able to verify and to prove that they have sustained or expect to sustain, regard being had to the said work which that managing owner has promised to deliver to them, whether it be great or small; and regard equally being had to the circumstance that no impediment of God or of the local authorities has befallen the managing owner of the ship or vessel.

Chapter ccxxviii. Of the servant and of the managing owner.

If any managing owner of a ship or vessel shall keep for himself any servant[1] for a given time, it is incumbent that the said servant shall observe all the contracts which he has agreed to with the managing owner of the ship, and it is reasonable, that as the servant is bound to observe all the contracts which he has made with the

[1] *servant*] The servant of the merchants is spoken of in chap. xxxii.

haura empres, que lo dit senyor sia tengut de attendre tot co que al dit servicial aura promes. E si lo dit servicial morra ans del temps que ell haura empres de servir ab lo dit senyor de la nau o leny, es tengut de donar e de pagar als proismes del dit servicial, per tot aytant com ell haura servit, sens tot contrast. E si per ventura lo senyor de la nau o del leny morra, lo dit servicial es tengut de servir als hereus e als proismes del senyor qui mort sera tot aytant de temps, com ell empres ab ell lo dia que ell se acorda, sens tot contrast; e los hereus e los proismes de aquell, qui mort sera, son tengut de attendre al dit servicial tot co, que aquell qui mort sera li havia promes en temps de la vida sua. Empero es axi a entendre, que l'dit servicial no sia tenguts de servir als dits proismes o hereus sino aytant com aquella nau o aquell leny sera e stara e ira per manament e per destrich dels dits hereus e proismes de aquell, qui mort sera e encara en temps de la vida sua n'era senyor. E si los dits hereus e proismes vendran o alienaran aquella nau o aquell leny a algu, ans que l'dit servicial haia servit lo dit temps, que ab aquell qui mort sera havia empres, lo dit servicial deu esser escapol al temps que aquella nau o aquell leny sera stat venut; e los proismes damuntdits o herens son tenguts de pagar lo dit servicial de tot aytant com ell haura servit a ells e encara a aquell, qui mort es, sens tot contrast. E si per ventura los dits proismes o herens no hauran de que puguen pagar lo dit servicial, ell deu esser pagat del preu que d'aquella nau o de aquell leny sera hagut. E si los dits herens o proismes del preu que de la dita nau o leny sera hagut no l'volran pagar, lo dit servicial se n'pot e se n'deu tornar a aquella nau o aquell leny, que ell servit haura, perco com es rao, que en qualche cosa hom faca servey o lavor algu, que aquella cosa lo dega pagar. Per que aquell, qui aytat

managing owner, so the said managing owner should be bound to observe all which he has promised to the servant. And if the said servant shall die before the expiration of the time for which he has agreed to serve the said managing owner of the ship or vessel, the managing owner is bound to give and to pay the next of kin of the said servant for all such time as he has served without any dispute. And if by chance the managing owner of the ship or vessel shall die, the said servant is bound to serve the heir or next of kin of the managing owner, who is dead, for so long a time as he has agreed with him on the day when he engaged himself, without any dispute, and the heir and the next of kin of him who is dead is bound to fulfil to that servant all which the deceased has promised during his lifetime. Nevertheless it is to be understood that the said servant is not bound to serve the said next of kin or heirs, except for as long as that ship or vessel shall be and stay and go under the directions and for the wants of the said heirs and next of kin of the deceased, who during his life time was the managing owner. And if the said heirs or next of kin shall sell or alienate to any one that ship or vessel before the said servant has served the said time which has been agreed upon with the deceased, the said servant ought to be liberated from his engagement at the time when that ship or vessel shall be sold, and the next of kin or heirs aforesaid are bound to pay the said servant for all the time which he has served with them, and likewise with the deceased without any dispute. And if by chance the said next of kin or heirs have not wherewithal to pay the said servant, he ought to be paid from the price which has been received for the said ship or vessel. And if the said heirs or next of kin are not willing to pay him from the price which has been received for the said ship or vessel, the said servant shall have a remedy against the said ship or vessel which he has served, because it is reasonable that in whatever thing a person invests his services or his labor, that very thing ought

nau comprara, guard e deu guardar com la comprara, perco que dan o greuge no li n'puixa esdevenir. E per les raons desusdites fo fet aquest capitol.

Capitol ccxxix. De stiba de gerres o botes buydes.

Si algun[1] senyor de nau o de leny navegara en Barbaria o en Espanya[2] o en algunes altres parts, si alguns mercaders metran en sa nau o en son leny stiba de botes o gerres buydes per portar en algunes parts, si la stiba ira condreta e si los dits mercaders no hauran fet preu de nolit per rao de aquella roba o stiba o gerres, com aquell senyor d'aquella nau o de aquell leny sera junt en aquell loch on aquella stiba o gerres devra descarregar, sia en asalt del senyor de la nau o del leny de pendre quin nolit se volra, o de pendre la meytat de aquella stiba o gerres que ell portades haura, pus que preu algu no sera fet del nolit. Empero, si lo senyor de la nau o del leny haura feta alguna convinenca o empressio per fet de nolit de la dita stiba o gerres, aquella convinenca o promissio es mester que l's attena ell. Empero, si la stiba desusdita no y ira condreta, ans ira desfeta, si desfeta era, lo senyor de la nau o del leny no deu haber pas la meytat, sia que n'haia fet preu del nolit o no, mas pot ne pendre nolit que sia suficient. Per qual rao no deu haver axi be la meytat de les botes desfetes com de les entegres, si preu algu no y haura fet? Perco, que com lo senyor de la nau o del leny

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[1] *Si algun*] Esp. 124, chapter ccxxxvi. commences here with the Rubric "Si algun senyor de nau o " de leyn navegara en Espanya."

[2] *Espanya*] Esp. 124 reads "Spanya" as in chapter xxxiii.

to pay him. Wherefore every one who shall buy such a ship must beware, or ought to beware, how he buys it, in order that no loss or prejudice may result to him. And for the reasons above stated this chapter was made.

Chapter ccxxix. Of a stowage of jars and empty barrels.

If any managing owner of a ship or vessel shall navigate in Barbary or in Spain[1] or in any other parts, if any merchants shall put on board his ship or vessel a stowage of barrels or empty jars[2] to carry to any parts, if the casks shall be put on board entire, and the said merchants have not agreed to the price of the freight for carrying those goods or casks or jars, when that managing owner of the ship or vessel shall have arrived at that place where the casks or jars ought to be discharged, it shall be at the option of the managing owner of the ship or vessel to take what freight he chooses, or to take the moiety of the casks or jars which he has carried, since no price has been fixed for her freight. Nevertheless, if the managing owner of the ship or vessel has made any contract or agreement for the amount of freight to be paid for those casks or jars, it is incumbent that he observe that contract or agreement. Nevertheless, if the above said casks shall not be put on board entire, but shall be taken to pieces, the managing owner of the ship or vessel ought not to have the moiety, whether he has fixed a price for the freight or not, but he may take a sufficient freight. For what reason ought he not to have the moiety of the casks which are taken to pieces in the same manner as of the casks which are entire, if he has not fixed the price? Because when the managing owner of the ship or vessel was in that place or in some other

[1] *in Barbary or in Spain*] The same countries are mentioned under similar circumstances in chapter xxxiii.

[2] *empty jars*] The word "gerra" is used in chapters xcxi, and cxcii. to signify jars of earthenware. M. Pardessus considers that vessels of wood are here intended, and has translated "stiba de botes o gerres "buydes," un chargement de barriques ou de tonnes. The Italian and Dutch versions adhere to the same translation of the word as in the chapters above mentioned, namely, "vettine" in Italian, "aardepotten" in Dutch, signifying jars of earthenware.

era en aquell loch o en algun altre on trobas roba que volgues levar a nolit, ell o poguera fer: e ell per portar la stiba en condret, no la pora levar, e axi haura a pendre aquel nolit. Encara mes per altra rao, que si ell la desfahia, per ventura costarli hia mes de drecar o de adobar que ell no hauria de la roba que ell poguera levar a nolit: e axi es rao, que haia e dega haver la meytat de la stiba que ira condreta, e no d'aquella que ira desfeta. Encara per altra rao, car si per ventura ell portava la stiba desfeta, o sera en algun loch on ell trobara roba, ell la pot levar sens son dan, e pot metre aquella stiba qui desfeta ira per crostam, salvo empero que si era ligada en faixs, que haura a fer messio per fer la religar. E axi per les raons desusdites no n'deu haver tam be la meytat de la stiba que portara desfeta, com d'aquella que portara en condret.

Capitol ccxxx. Com la roba pot esser aturada, o lexada per lo nolit.

Si algun[1] senyor de nau o leny, qui haura noliciada la sua nau o lo seu leny a algu o a alguns per anar en ultramar o en Alexandria o en Armenia o en algunes altres parts, los mercaders son tenguts de pagar lo nolit al senyor de la nau o leny segons que ab ell hauran empres. E si los dits mercaders pagar no volran, ell se pot tenir tanta de roba, que valga lo seu nolit o mes, o lo scriva per ell, segons que en un capitol ja desusdit es contengut. Empero, si los dits

[1] *Si algun*] Esp. 124, chapter ccxxxvii. begins here with the Rubric "Si algun senyor de nau o de leyn aura noliejada la sua nau."

where he could find goods which he might take on freight, he might have done so, and he has not been able to do so in order to carry the casks entire, and accordingly he has had to lose that freight. Still further for another reason, that if he had taken them to pieces, by chance it would have cost him more to put them together and to refit them than he would have received from the goods which he could have taken on freight: and accordingly it is reasonable, that he should have the moiety of the casks which are carried entire, and not of the casks which are taken to pieces. Further for another reason, for if by chance he has carried the casks taken to pieces and should be in a place where he should find a cargo, he might put it on board without any loss to himself, and might place the staves of the casks which had been taken to pieces along the bottom of the ship, saving, however, that if they were bound together in bundles he will have to incur expense to unbind them. And accordingly for the reasons above stated he ought not to have the moiety of the staves, which he shall carry loose, equally as of those which he carries as entire casks.

Chapter ccxxx. How goods may be detained or be left behind for the freight.

If any managing owner of a ship or vessel has let his ship or his vessel on freight to any person or persons to go beyond the sea to Alexandria or to Armenia[1] or any other parts, the merchants are bound to pay the freight to the managing owner of the ship or vessel according to what has been agreed to with him. And if the said merchants are not willing to pay, he or the ship's clerk for him may detain as much of the goods as his freight is worth or more, according to what is contained in preceding chapter.[2] Nevertheless, if the said merchants

[1] *to Alexandria or to Armenia*] The same place and country are alluded to in chapter xxxii., as frequented by merchants.

[2] *preceding chapter*] The power of the ship's clerk to take security for the freight of goods is declared in chapter xv. An allusion may be here made generally to chap. ccxxv. but the ship's clerk is not there mentioned by name.

mercaders li volran jaquir la roba que ell portada haura per lo nolit que ells li prometeren de donar, ell la ha a pendre, e en res als no l's pot destrenyer; salves empero totes les convinences e empressions de ell a ells que fossen fetes. Empero es axi a entendre, que si la nau[1] o leny es nolieiat a scar, e la roba no sia tota una, co es que aquells mercaders qui la nau o leny hauran nolieiat a scar hauran algun faix o faixs de ceda o de safra o de grana o de alguna altra cosa que fos nobla mercaderia,[2] e tota la altra roba, que ells per lo nolit jaquir volran, no valra lo nolit; lo senyor de la nau no es tengut que la prenga, si no s'volra; que mester es que lo senyor de la nau sia pagat del nolit, pus roba hi haura que li bast. Salvo empero tota convinenca, que d'ell a ells sera stada empresa. Empero, si los dits mercaders seran en loch, on no puguen vendre aquella dita roba, ne poran haver moneda, e ells la hauran ab alguna altra roba a baratar, los dits mercaders son tenguts de donar tanta de roba al senyor de la nau, que li sia ben bastant al seu nolit, si ell pendre la n'volra. E si lo dit senyor de la nau pendre no la n'volra, los dits mercaders li son tenguts de pagar lo nolit, si tota la mercaderia lur se n'sabia consumar; que mester es que l'senyor de la nau sia pagat, salvant que deu esser entes[3] a bon us e a bon enteniment. E si lo senyor de la nau volra fer gracia als dits mercaders, que ell los vulla sperar del nolit, tro que ells sien tornats en aquell

[1] *que si la nau*] Esp. 124 omits these and the following words down to "co es" inclusive.

[2] *altra cosa que fos nobla mercaderia*] Esp. 124 reads altra mercaderia noble.

[3] *entes*] Esp. 124 has a slightly different reading, viz., "entes a us "e a bona costuma de la merca-"deria."

wish to leave the cargo[1] which he has carried for the freight which they have promised to give, he has to accept it and cannot constrain them to any thing else, saving always all the contracts and agreements which have been made between him and them. Nevertheless, it is to be understood, that if the ship or vessel is chartered for a lump sum, and the cargo be not of one and the same character, that is, that the merchants who have chartered for a lump sum have some package or packages of silk, or of saffron, or of cochineal, or of some other article that is precious merchandise, and all the other goods, which they would be willing to leave behind for the freight, are not worth the freight, the managing owner of the ship is not bound to accept them, if he is not willing to do so; for it is incumbent that the managing owner of the ship shall be paid for his freight, since there are goods which are sufficient. Saving, however every contract which has been made by one party with the other. Nevertheless, if the said merchants shall be in a place where they cannot sell those goods and cannot procure money for them, and have to barter them for other goods, the said merchants are bound to give so much of the goods to the managing owner of the ship, as shall be well sufficient for the freight, if he is willing to accept them. And if the said managing owner of the ship is not willing to accept them, the said merchants are bound to pay him the freight, if all the merchandise has to be consumed in so doing, for it is incumbent that the managing owner of the ship should be paid according to the usage and good custom of merchants. And if the managing owner of the ship shall be willing to shew grace to the said merchants, that he will wait for his freight until they have returned to that place whence they set out, or

[1] *the cargo*] Where all the cargo is given up by the merchants to pay the freight, the managing owner has no option but to accept it, as provided in chapter ccxxv.

loch de on partiren, o en altre on ells pusquen fer venda d'aquella roba, que ells hauran presa a barata, ell ho pot fer, que mariner ne algun altre no li n'pot contrastar, ne ho deu fer; salvo empero als mariners tota promessio, que l'senyor de la nau los hagues fets. E si lo senyor de la nau los fara la gracia desusdita, los dits mercaders son tenguts de donar al senyor de la nau guany per sou e per livra, segons que ells guanyaran, de tot co que ells dar devien per son nolit. E si ells per ventura no y guanyaran, ells son tenguts de donar al senyor de la nau tot lo seu nolit, que no es mester que per fer a ells plaer, ell ne sostengues dan; e perco com no roman per ell si ells no guanyen, ni es sa culpa. E lo senyor de la nau es tengut de donar als mariners guany per lo lur loguer segons que ell lo pendra de l's mercaders, salvant empero totes convinences o empreniments, que fossen fets entre lo senyor de la nau e los mercaders e encara los mariners. Empero, si la nau o leny sera nolieiat e quintarades, si los mercaders no obligaran la una roba per l'altra al nolit al senyor de la nau, lo dit senyor de la nau no s'pot ne deu retenir la una roba per l'altra, pus que al nolieiar no s'empres. Perque tot senyor de nau o leny se guart e s'deu guardar, ja com nolieiara, e com no, per tal que dan no li n'pusca venir: e guartse lo senyor de la nau a qui nolieiara e a qui no, e com e com no; que mester es que l'mariner sia pagat de son loguer, haia lo senyor de la nau son nolit o no,

to another place where they may be able to make a sale of those goods, which they have accepted by way of barter, he may do so, for neither mariner nor any other person may object, nor ought he to do so, saving however for the mariners every promise, which the managing owner of the ship may have made to them. And if the managing owner of the ship shall show them the grace aforesaid, the said merchants are bound to give to the managing owner of the ship a share of the profit, which they shall make, calculated by shillings and pounds, in proportion to what they ought to give him for the freight. And if by chance they shall not make any profit, they are bound to pay to the managing owner of the ship all his freight, for it is not proper that to do them pleasure he should sustain loss; and because it does not result from any thing on his part that they have made no profit, nor is it his fault. And the managing owner of the ship is bound to give to the mariners a share of the profit in proportion to what he shall receive from the merchants, saving always all the contracts or agreements which may have been made between the managing owner of the ship and the merchants, and likewise the mariners. Nevertheless, in the case where the ship or vessel shall be freighted by the quintal, if the merchants have not made one portion of the goods liable for the freight of another portion to the managing owner of the ship, the said managing owner of the ship can not and ought not to retain one portion of the goods for another, because it has not been so agreed at the affreightment. Wherefore every managing owner of a ship or vessel must beware or ought to guard himself how he freights and how not, in order that loss may not befall him: and the managing owner of a ship must beware to whom he shall let his ship, and to whom he shall not let it, and how so and how not, for it is incumbent that the mariner should be paid for his wages, whether the managing owner of the ship has his freight or not, since the mariner has per-

pusque l'mariner haura fet son servey en lo viatge. E per les raons desusdites fon fet aquest capitol.

Capitol ccxxxi. De nau de mercaderia presa per nau armada.

Si alguna[1] nau o leny armat, que entrara en cors o n'exira o y sera, s'encontraran ab alguna altra nau o leny de mercaderia, si aquella nau o leny de la mercaderia sera de enemichs e co que dins sera, en aco no cal als dir, perco car quascu es tan cert que ja sap que se n'te a fer, perque no cal en aytal cas posar alguna rao. Empero, si la nau o lo leny, qui pres sera, es de amichs, e la mercaderia que ell portara sera de enemichs, l'almirall de la nau o del leny armat pot forcar e destrenyer aquell senyor de aquella nau o de aquell dit leny, que ell pres haura, que ell ab aquella sua nau li deia portar co que de sos enemichs sera, e encara que ell so te en sa nau o en son leny, tro que sia en loch de recobre; es axi a entendre que l'amirall o hom per ell la tenga rera si en loch que no haia paor que enemichs la li poguessen tolre: l'almirall empero pagant a aquell senyor d'aquella nau o d'aquell leny tot lo nolit que ell haver devia, si la portas en aquell loch on descarregar la devia, o segons que en lo cartolari sera trobat scrit. E si per ventura cartolari algu no sera trobat, lo sen-

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[1] *Si alguna*] Esp. 124, chapter ccxxxviii. commences here with the Rubric "Si alguna nau o algun "leyn armat que entra en cors."

formed his service on the voyage. And for the reasons above said this chapter was made.

Chapter ccxxxi. Of a merchant ship taken by an armed ship.

If any ship or armed vessel, which shall be going out to cruise or shall be returning from a cruise, or shall be engaged in cruising, meets with any ship or vessel of merchandise, if that ship or vessel of merchandise and the cargo within her is enemy's property,[1] in that case it is useless to say anything, for every person knows for certain what he is bound to do, wherefore it is useless to state any reasons. Nevertheless, if the ship or vessel which shall be captured is a friend's ship,[2] and the merchandise which it carries is enemy's property, the admiral of the armed ship or vessel may force and constrain the master of that ship or vessel which he has captured to carry as a matter of obligation the enemy's property and to keep it safe on board his ship or vessel until it is in a place of safety: it is to be understood that the admiral or his agent shall tow the vessel astern of him into a place where he has no fear that the enemy can carry it away; the admiral meanwhile paying to the managing owner of that ship or that vessel all the freight which he ought to have, if he had carried the merchandise to the place where he ought to have discharged it, or according to what shall be found written in the ship's manifest. And if by chance no ship's manifest shall be found,

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[1] *enemy's property*] The question of prize, where both ship and cargo are enemy's property, has been discussed in chapters clxxxv., clxxxvi., and clxxxvii.

[2] *a friend's ship*] The question whether a neutral flag shall protect an enemy's property is here decided in the negative, and this rule of the Consolat seems to have prevailed throughout the cities of the Mediterranean in the thirteenth century, and to have been generally adopted by the traders of the northern and western seas in the fourteenth century. This chapter has been translated into English, and has been published by Dr. Christopher Robinson in his Collectanea Maritima, London, 1801, as well as chapter ccxlv. as containing the rule of the sea sanctioned by long and general usage in Europe.

yor de la nau o leny deu esser cregut en son sagrament per rao del dit nolit. Encara mes, si per ventura com lo almirall o hom per ell sera en loch que co que guanyat haura pora salvar, si ell vol que aquella nau o leny que pres haura li port co que ell guanyat haura, ell lo y deu portar al dit almirall o a aquell qui per ell hi sera. Empero deu se n'avenir ab ell, e qualsevol avinenca o empressio que entre ells feta sera, lo dit almirall o aquell qui par ell hi sera, es mester que la y attena. E si per ventura entre ells promissio o convinenca alguna per rao del nolit feta no sera, lo dit almirall o aquell qui per ell hi sera, es mester que paguen lo nolit a aquell senyor de aquella nau o leny, qui aquell guany portat los ho haura en aquell loch, on ells hauran volgut, tot aytant com altra nau o altre leny ne devria haver de nolit de semblant roba, que aquella sera, e encara mes, sens tot contrast, e sia entes pusque aquella nau o leny sera junt en aquell loch, on lo dit almirall, o aquell qui per ell hi sera, porra salvar co que guanyat haura, es a entendre que sia en loch d'amichs, tro en aquell loch on ell la li fara portar. E si per ventura aquell senyor d'aquella nau o leny, que ells pres hauran, o alguns des sobredits mariners, qui ab ell seran, diran que han alguna roba, que lur es, en aquella nau o leny; si es mercaderia, ells no n'deven esser creguts per lur simpla paraula, ans deu esser vist e guardat lo cartolari de la nau, si trobat hi sera. E si per ventura cartolari algu trobat no y sera, lo dit senyor de la nau o los dits mariners deven fer sagra-

the managing owner of the ship or vessel ought to be believed on his oath with regard to the said freight. Still further, if by chance, until [1] the admiral or his agent shall be in a place where he can keep his prize in safety, if he wishes that the ship or vessel which he has taken shall carry for him what he has captured, it ought to carry it for the admiral or his agent. Nevertheless there ought to be an agreement on the subject, and whatever contract or agreement shall be made between them, it is incumbent that the said admiral or his agent should observe it. And if by chance no promise or agreement shall be made between them with regard to the freight, it is incumbent that the said admiral or his agent should pay as freight to the managing owner of the ship or vessel, who shall have carried that prize to the place which they have chosen, as much as any other ship or vessel ought to receive for similar goods like them, or still more, without any dispute, and this is to be understood to apply after that ship or vessel shall have arrived in that place, where the admiral or his agent can place his capture in safety, that is to say, in the territory of a friend, until it arrives at that place where he will have it carried to. And if by chance the managing owner of that ship or vessel which they have captured, or any of the abovesaid mariners who are with him, shall say that they have any goods on board that ship or vessel which are their property, if it be merchandise, they are not to be believed on their simple word, on the contrary the ship's manifest ought to be inspected and examined, if it shall be found. And if by chance no ship's manifest shall be found, the said managing owner of the ship and the mariners ought to be put on their oath.

[1] *until*] The construction of this sentence is rather involved, but it is evidently intended to lay down the rule that the captor has the right of requiring the neutral vessel to carry its cargo "infra præsidia," that is, to a place where the cargo is safe primâ facie from recapture.

ment. E si ells per lur sagrament diran, que aquella roba sia lur, lo dit almirall o aquell qui per ell hi sera, la l's deu donar e delivrar sens tot contrast, esguardada empero la fama e la valor d'aquells qui sagrament faran e qui la roba demanaran. E si per ventura lo senyor d'aquella nau o leny de mercaderia, qui pres sera, contrastara que ell no volra portar aquella mercaderia, que en la sua nau o leny sera, e encara sera de enemichs, tro que aquells qui guanyada la hauran la tengan en loch de recobre, per manament que l'dit almirall li n'faca, lo dit almirall lo pot metre a fons o fer metre, si ell fer ho volra, salvo que deu salvar les persones que y seran; e neguna senyoria no l'ne pot destrenyer per mostra ne per clam que li n'fos fet. Empero es axi a entendre, que tot lo carrech, que en aquella nau o leny sera, o la major partida sia de enemichs. E si per ventura la dita nau o leny sera de enemichs, e lo carrech, que es en la dita nau o leny sera d'amichs, los mercaders, que en la dita nau o leny seran e de qui lo dit carrech sera del tot o en partida, se deven avenir per rao de la dita nau, qui de bona guerra es, ab lo dit almirall per algun preu convinent, segons que ells poran, e lo dit almirall deu los fer tota convinenca o pati, que convinent sia e ell sofferir puga, a la justa rao. Empero, si los dits mercaders avinenca o pati ab lo dit almirall fer no volran, lo dit almirall pot e deu amarinar la dita nau o leny e trametre en aquell loch, on armat sera, e los dits merca-

And if they shall say upon oath, that the merchandise is their property, the said admiral or his agent ought to give it up and restore it without any dispute, regard always being had to the character and quality of those who shall take the oath and claim the goods. And if by chance the managing owner of that merchant ship or merchant vessel, which shall be captured, objects and is not willing to carry that merchandise, which shall be in his ship or vessel and which is enemy's property, until those who have made prize of it have brought it into a place of safety, according to the directions which the admiral has given, the said admiral may sink or cause to be sunk that vessel, if he chooses to do so, saving always that he ought to save the lives of those on board of her; and no local authority[1] can constrain him to give an account, if any complaint or demand may be anywhere made against him. It is, however, to be understood in such a case that all the cargo which is on board of that ship or vessel or the greater part of it is enemy's property. And if by chance the said ship or vessel be enemy's property,[2] and the cargo on board the said ship or vessel be the property of friends, the merchants, who shall be on board the said ship or vessel and to whom the cargo shall belong either in whole or in part, ought to come to an arrangement in respect of the said ship, which is good prize of war, with the said admiral for a suitable price according as they may be able, and the said admiral ought to make an arrangement and compact with them, which shall be suitable and fair to him, upon just terms. Nevertheless, if the said merchants are not willing to make an arrangement or compact with the said admiral, the said admiral may and ought to take the said ship or vessel in tow, and to carry her to the place where he

[1] *local authority*] That is, no tribunal of a third power.

[2] *enemy's property*] This is the second case, where the cargo is neutral property, and the ship an enemy's ship.

ders son tenguts de pagar lo nolit a la dita nau o leny tot aytant, com si l's hagues portat lo dit carrech qui lur sera en aquell loch, on partar lo s'devia, e als no. E si per ventura los dits mercaders seran damnificats o agreviats per rao de la forca que lo dit almirall los haura feta, lo dit almirall no l's n'es de res tengut, perco car los dits mercaders no volgueren fer la dita avinenca o pati ab lo dit almirall per rao de la dita nau o leny, qui es de bona guerra: e encara per altra rao, perco car a les vegades valra mes la nau o lo leny que no fa la mercaderia que porta. Mas empero, si los dits mercaders seran volenterosos de fer la dita avinenca o pati ab lo dit almirall segons que damunt es ja dit, e lo sobredit almirall pati o avinenca fer no volra per argull ho superbia que en ell sera, e axi com desus es dit forciblament ab los dits mercaders se n'menara lo carrech desusdit, en que dret algu no haura, los dits mercaders no son tenguts de pagar nolit de tot ne en partida a la dita nau o leny, ne encara al dit almirall; ans lo dit almirall lo es tengut de retre e de restituir tot lo dan, que l's mercaders damuntdits per la forca damuntdita sostendran o speraran a sostenir per alguna rao. Mas empero, si sera ventura o cas que la dita nau o leny armat desusdit se encontrara ab la dita nau o leny de la mercaderia desusdita en tal loch, que los dits mercaders la dita avinenca o pati haver no poguessen, si los dits mercaders seran homens coneguts e tals que la dita avinenca o pati fos en ells segur, lo dit almirall no l's deu fer la dita forca; e si la l's fa, es los tengut de restituir lo dan desusdit, si los dits mercaders lo sostendran; e si per ventura los

was fitted out, and the said merchants are bound to pay as much freight to the said ship or vessel as if it had carried the said cargo which belongs to them to the place where it ought to have carried it, and otherwise not. And if by chance the said merchants shall be damnified or aggrieved on account of the constraint which the said admiral has applied to them, the said admiral is not responsible to them for anything, because the said merchants were not willing to make the said arrangement or compact with the said admiral on account of the said ship or vessel, which was good prize of war; and further for another reason, because sometimes the ship or the vessel is worth more than the merchandise which it carries. But nevertheless, if the said merchants shall be desirous to make the said arrangement or compact with the said admiral, according to what has been above said, and the said admiral is not willing to make any arrangement or compact from arrogance or pride which is in him, and accordingly as above said shall carry away with him forcibly the said cargo, in which he has no right, together with the said merchants, the said merchants are not bound to pay any freight either in whole or in part to the said ship or vessel, nor further to the said admiral; on the contrary the said admiral is bound to make good and restore all the loss which the abovesaid merchants shall sustain from the said force, or expect to sustain for any reason. But nevertheless, if it be the chance or accident that the said armed ship or armed vessel shall meet with the said merchant ship or merchant vessel in such a place that the said merchants cannot execute the said arrangement or compact, if the said merchants are well-known men and such that the arrangement and compact as regards them is secure, the said admiral ought not to apply force to them; and if he does so, he is bound to restore to them the loss above mentioned, if the said merchants shall sustain it; and if by chance the said

dits mercaders homens coneguts no seran o lo pati desusdit pagar no poran, lo dit almirall los pot fer la forca desusdita.

Capitol ccxxxii. De nau que haura a descarregar per cas fortuit.

Si algun[1] senyor de nau o leny haura carregat de tot o de partida en port o en plaia o en sparagol o en altre loch, e si stant aqui on haura carregat o en altre loch li vendra cas de ventura, que ell haura a descarregar de tot o de partida, lo cas de ventura es a entendre, si li surtira stopa o romball o alguna cadena o cadenas o perdra alguna exarcia perque ella fos a perill, o per lenys armats de enemichs; si en aquell loch, on lo cas de ventura li esdevendra, haura barques de descarregar, que ell puga haver per diners, ell les deu logar e fer descarregar tro que sia a salvament: e lo salvament es a entendre que hagen trobada aquella malafeta o lo dit reguart sia passat. E si per ventura ell no trobara barques per diners, si y haura algunes naus o lenys qui fossen vagabunts, vol aytant dir que no haguessen viatge, lo senyor de la nau o leny, a qui lo cas desusdit sera esdevengut, deu dir e demostrar a aquells qui seran senyor o tendran en comanda les dites naus o lenys, que a ell es esdevengut lo cas desusdit, e que ells li deguen donar socors e ajuda, perque ell puga salvar aquella nau o leny e l'haver qui en ella es; e si l's dits senyors, o aquells qui en comanda les tendran, li volran fer ajuda e socors menys de servey, ell ho deu rebre e deu los ne guardar de tot dan. E si los dits senyors o aquells qui en comanda tendran les dites naus o lenys, ne volran haver servey o loguer, ell los n'es tengut de donar axi com ab ells se n'pora avenir. Empero, si los dits li hauran demanat trop e ell los ho haura

[1] *Si algun*] Esp. 124, chapter ccxxxix. begins here with the Rubric "Si algun senyor de nau o de leyn aura carregat de tot o de partida."

merchants shall not be well-known men or cannot pay the ransom agreed for, the said admiral may apply force to them as above mentioned.

Chapter ccxxxii. Of a ship which has to discharge from fortuitous circumstances.

If any managing owner of a ship or vessel has loaded in whole or in part in a port, or off a beach, or in a bay, or in any other place, and whilst staying at the place where she has loaded her cargo, or in another place a case of misfortune overtakes her, so that she has to discharge either in whole or in part; by a case of misfortune is understood that the oakum has come out, or a plank has sprung, or a chain or chains have broken, or some tackle is lost, wherefrom or from armed vessels of the enemy she is in peril, if in that place, where the case of misfortune overtakes her, there shall be boats to discharge the cargo, which she may have for money, the managing owner ought to hire them and have her cargo unloaded until it is in safety, and by safety is understood that they have repaired the mishap or the said alarm has passed away. And if by chance the managing owner shall not find boats for money, if there be any ships or vessels wandering about, in other words, which have not engagements for any voyage, the managing owner of the ship or vessel, to which the accident above mentioned has happened, ought to say and show to those who are managing owners or have the charge of the said ships or vessels the accident, which has happened to him, and that they ought to give him succour and aid in order that he may save his ship and vessel and the effects on board of her; and if the said managing owners, or those who have the charge of the vessels, are willing to give him aid and succour without payment, he ought to receive it and guard them from all loss. And if the said managing owners, or those who shall have charge of the said ships or vessels, wish to have payment or wages, he is bound to pay them according as he shall be able to agree with them. Nevertheless, if the said persons have demanded too much and he has assented to

atorgat, ells no n'deven haver tot co que ell los haura atorgat, ans deu esser mes en poden de bons homens, qui u meten en convinenca. Per qual rao deu esser mes en poden de bons homens, pus ab ells se n'seran avenguts ? Perco, car si aquells li haguessen demanada la meytat de la roba e de la nau, ell la l's haguera otorgada, no per rao que ells hi hagen ne la y deguen haver, e axi es hi bo lo temprament dels bons homens. Empero, si aquella nau o aquell leny, qui lo servey haura pres, pendra algun dan, aquell qui lo servey haura promes e dat, no li sia tengut de alguna esmena a fer. E si per ventura en les dites naus o lenys no haura algu, qui plavir se n'gosas, ell se n'deu anar a la senyoria del loch, on aquell cas li sera esdevengut, e ab consentiment de la senyoria ell se n'pot e se n'deu servir, guardant tota via de tot dan de aquella nau o leny, del qual ell se sera plavit, e encara deu li n'donar servey, si aquell lo n'volra pendre o l'ne demanara, a coneguda e esguardament de la dita senyoria. E si per ventura lo cas desusdit li esdevendra en algun loch, on ell no trobas tost la senyoria, ans seria pus tost a condicio que fos tot perdut, ell se n'pot plavir, guardant ell tota via empero de tot dan e de tot destrich aquell de qui sera aquella nau o leny, de que ell se sera servit o plavit, e encara donnat a ell servey o loguer, si ell lo n'demanara, e tota via a coneguda e esguardament de bons homens de mar o del loch on seran. E per les raons desusdites fo fet aquest capitol.

it, they ought not to have all that he has assented to; on the contrary it ought to be referred to the decision of prudhommes, who shall bring about an arrangement. For what reason ought it to be submitted to the decision of Prudhommes, since they have made an agreement? For this reason, because if they had demanded the half of the goods and of the ship, he would have assented,[1] although their demand was not reasonable nor such as they ought to have; and accordingly the arbitration of Prudhommes is a proper thing. Nevertheless, if that ship or that vessel which has received the payment shall suffer any loss, he who has promised and given the payment is not bound to make any compensation. And if by chance there be no one in the said ships or vessels who dares to help him, he ought to go to the authorities of the place where that accident has happened to him, and with the consent of the local authorities he may and ought to make use of them, guarding under all circumstances from any loss the ship or vessel by which he has been helped; and further, he ought to make a payment for its help, if it should be desired or demanded according to the judgment and award of the said authorities. And if by chance the above-said accident shall happen in any place where he cannot readily find the authorities, and matters will soon be in such a condition[2] that all will be lost, he may help himself, guarding always from all loss and from all mischief the person to whom the ship or vessel belongs, which he has employed for his own service, and further giving to him payment or wages, if he claims it, and under all circumstances according to the judgment and award of the Prudhommes of the Sea, or of the place where they may be. And for the above stated reasons this chapter was made.

[1] *assented*] The same contingency in a case of shipwreck is provided for in a similar manner by Article iv. of the Rolls of Oleron.

[2] *a condition*] An analogous case is provided for in a similar manner in chapter clxiii.

Capitol ccxxxiii. De patro qui sera empatxat a la partida per deutes.

Si algun [1] senyor de nau o leny devra deute o deutes a algu o a alguns, e lo senyor de la nau haura stat en aquell loch on lo deute devra, e ab aquell a qui lo deute devra ensemps un mes o dos o quantitat de temps; si aquell o aquells, a qui ell devra, no li demanaran e ab la senyoria no l'ne destrenyeran, mentre que ell sta aqui ab ells ensemps, tro que ell sera espatxat de tot per anar guanyar vers algunes parts: e quant ells veuran que ell es espatxat de partir de la terra, los dits deutors se n'iran a la senyoria a clamar se n'd'ell; aquells deutors aytals o clamartse [2] no l's deu escoltar ne oir la senyoria, ni aquell qui lo deute los devra destrenyer ne destorbar de son viatge, pusque ell haura stat ab los dits deutors axi com desus es dit, sino tan solament en aytant que si ell es hom qui pusca haver fianca, deu la y fer donar. En aquesta guisa empero, que aquella fianca, que ell dara, no sia destreta per senyoria, tro aquell qui lo deute devra sia tornat en la terra, es axi a entendre, que sia tornat en aquell loch, on lo deute devra e encara sera stat afiancat, si donchs la fianca per tot obligar no s'volra. E encara mes, que la fianca, que per aytal rao sera donada, no sia destreta per los dits deutors, ne encara per la senyoria, tro que los dits deutors ab la senyoria ensemps sien passats per lo principal e per los bens de aquell. E si los bens d'aquell principal no bastaran a aquell deute o deutes a pagar a aquell a qui seran deguts, la donchs los dits deutors ab la senyoria ensemps deven e poden anantar contra aquell qui fianca sera,[3] e contre sos bens. Empero, si los bens d'aquell principal bastaran, la dita fianca ne

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[1] *Si algun*] Esp. 124, chapter ccxl. begins here with the Rubric "Si algun senyor de nau o de leyn "deura deutes a algun o alguns."

[2] *o clamartse*] These words are omitted in Esp. 124.

[3] *fianca sera*] Esp. 124 has a different reading, viz., "qui fiansa "sera, e encara contra aquell que "l's bens d'aquella fiansa sera "obligava."

Chapter ccxxxiii. Of the managing owner who shall be arrested at his departure for debts.

If any managing owner of a ship or vessel shall owe a debt or debts to any person or persons, and the managing owner of the ship has been staying in the place where he owes the debt in company with the person to whom he owes the debt for a month or two, or some length of time, so that the person or persons to whom he is indebted have not claimed it from him nor with the help of the local authorities have constrained him to pay, whilst he was staying there in company together with them, until he was equipped with everything to go and trade in certain parts: and when they have seen him equipped to start from the country, the said creditors have gone to the local authorities to complain of him, the local authorities ought not to hear or listen to such creditors, nor to constrain or disturb from his voyage him who owes the debt, since he has stayed with the said creditors in the manner aforesaid, except only that if he be a person who can find a surety, they ought to make him find it. In this form, however, that the surety which he shall find shall not be constrained by the local authorities, until the person who owes the debt has returned to land, that is to say, that he has returned to that place where he owes the debt, and has found the surety, unless the surety is willing to bind himself absolutely: and still more that the surety, who shall be found for such reason, shall not be constrained by the creditors, until the said creditors with the local authorities have proceeded against the principal and against his goods. And if the goods of that principal do not suffice to pay the debt or debts to him to whom they are owing, thereupon the said creditors together with the local authorities should and may proceed against him who has been surety, and against his goods. Nevertheless, if the goods of that principal are sufficient, the

los bens d'aquell no deven esser venuts ne alienats per alguna rao; si ja donchs aquella dita fianca per lo tot no s'y obliga. Empero, si lo dit senyor de la nau o del leny no trobara fianca, la senyoria no l'ne pot destrigar de son viatge, sino aytant que l'deu fer jurar, que ell no ha fermanca, ne la pot trobar. Encara que l'deu fer jurar, que quant que ell sia tornat en aquell loch, on lo deute devra, que ell que s'dega avenir ab aquells, a qui ell lo deute devra e encara sera stat degut be e plenariament. Perque la senyoria no l'deu destrigar d'aquell viatge, si lo dit senyor de la nau o leny fianca no haura? perco, car aquells a qui lo deute devra no l'hauran afrontat ne destret ab la senyoria de mentre que ab ells ensemps havia stat, axi com desus es dit, ans s'o hauran esperat entro al darrer dia, que ells saben que ell deu esser espatxat de la terra; encara per altra rao, car seria mal fet que los dits mercaders, qui la lur roba o mercaderia hauran mesa e carregada en aquella nau o leny, fossen destrigats e tenguessen la lur roba a perill e a condicio de perdre per la negligencia de aquells deutors, qui ans que aquella nau o leny fos espatxat no se n'fossen clamats. Perque quascu se guart e se deu guardar, a qui algu devra alguna cosa, que no l'esper tro al derrer dia, que si u fa, pendra li n'axi com desus es dit. E per les raons desusdites fo fet aquest capitol. E si per ventura aquell senyor d'aquella nau o leny morra ans que sia tornat en aquell loch on la fianca haura dada, e encara hi devra aquell deute, si la fianca sera obligada per lo tot, que al tot o al sabut del viatge que ell pague, o venga o no, o muyr aquell o uo, que la fianca es tenguda de pagar qui axi com desus es dit se obliga, salves empero totes avinences e obligacions que dels uns als altres seran fetes e empreses per alguna justa rao.

said surety and his goods ought not to be sold or alienated for any reason, unless that surety is bound absolutely for the whole debt. Nevertheless, if the said managing owner of the ship or vessel shall not find a surety, the local authorities cannot delay his voyage except so far as to require him to make oath, that he has no surety, and cannot find any. Further, he ought to be required to swear that when he shall have returned to that place where he owes the debt, he will loyally and fully settle his debt with those to whom he owes it, and to whom it is owing. Wherefore ought not the local authorities to delay his voyage, if the managing owner of the ship or vessel does not find a surety? because as those to whom he owes the debt did not sue him or constrain him before the local authorities whilst he was staying with them as above said, on the contrary waited until the last day when they knew that he ought to set out from the country; further, for another reason, for it would be ill done, if those merchants who have put on board and loaded their goods or merchandise in that ship or vessel, were to be delayed and have their goods placed in peril and in risk of being lost by the negligence of those creditors, who made no claim before that ship or vessel was equipped to start. Wherefore every person to whom any one shall owe any thing should beware and ought to guard himself, and not wait until the last day, for if he do so, that which has been above stated will happen to him. And for the reasons aforesaid this chapter was made. And if by chance the managing owner of that ship or vessel shall die before he shall have returned to that place where the surety has been given, and shall still owe the debt, if his surety is bound for the whole, that he shall pay the whole at the conclusion of the voyage, whether he come or not, or die or not, the surety is bound to pay, who obliges himself as aforesaid, saving always all agreements and obligations, which shall have been made or undertaken by the one party towards the other for any just reason.

Capitol ccxxxiv. De comanda que lo comandatari dega portar ab si.

Si algu[1] comanara o haura comanat a algu alguna roba per fet de mercaderia, si aquell, qui la comanda fara o haura feta, empendra o haura empres ab aquells a qui ell fa o haura feta la dita comanda, que ell que dega portar ab si la dita comanda en aquell loch o lochs, o viatge o viatges, que entre ell e aquell que la dita comanda li haura feta seran stat empresos; lo dit comandatari es tengut de attendre totes convinences entre ell e aquell qui fara comanda fetes, o sien fetes ab carta o menys de carta, valen o deven haver valor, ab que en ver puguen esser meses, si mester sera. E si per ventura les dites convinences seran fetes axi com desus es dit e sots les condicions desusdites, si aquell qui la comanda haura presa la livrara a altre, o li trametra la dita comanda sens sabuda e voluntat d'aquell qui feta la li haura; si la dita comanda se perdra de tot e de partida, lo dit comandatari es tengut de retre e de donar tota la dita comanda e lo guany, que en aquelles robes poguera esser fet, a aquell qui la comana, perco com ell no li ha atteses les convinences, que entre ells ab dosos foren empreses com ell rebe la dita comanda. E si per ventura la dita comanda no s'perdra del tot ne en partida, ans ira sana e salva en aquell loch, on lo dit comandatari la haura tramesa; si la dita comanda stara en aquell loch desusdit tant de temps, que la dita comanda pendra algun dan o algun menyscap per culpa o per negligencia del dit comandatari, ell es tengut a restituir tot lo dan o menyscap a aquell qui la co-

[1] *Si algu*] Esp. 124, chapter ccxli. here commences with the Rubric "Si algu comenara o haura "comenat a algun alguna roba."

Chapter ccxxxiv. Of the commission which the commissioner ought to carry with him.

If anyone commit[1] or has committed to any one any goods in the nature of merchandise, and if he who shall intrust or has intrusted the commission, shall agree or has agreed with him to whom he intrusts or has entrusted the commission, that he should carry with him the said commission to that place or places, or on that voyage or voyages, which shall be agreed upon between him and the person who has entrusted to him the commission, the said commissioner is bound to observe all the engagements made between him and the person who has entrusted to him the commission, whether they be made in writing or without writing, for they are valid and ought to be valid, provided they can be verified, if need be. And if by chance the said engagements have been made as above said, and under the conditions above mentioned, if he who has taken charge of the commission shall hand it over to another, or shall transmit the said commission without the knowledge or consent of him who has delivered it to him, if the said commission shall be lost in whole or in part, the said commissioner is bound to restore and pay over all the said commission and the gain which could have been made with those goods to him who committed them to him, because he has not observed the engagements which were agreed upon between them both when he took charge of the said commission. And if by chance the said commission shall not be lost in whole or in part, on the contrary shall go safe and sound to the place whither the said commissioner shall have transmitted it, if the said commission shall remain in the above-mentioned place so long a time that the said commission shall suffer any damage or deterioration by the fault or negligence of the said commissioner, he is bound to make good all that loss and deterioration to him who has en-

[1] *commit*] The subject of commissions has been discussed in chapter clxv. and the eleven following chapters.

manda desusdita la haura feta. E si per ventura aquell, a qui lo dit comandatari la haura tramesa, la vendra a menyscap per sa negligencia, o perco car ell sera mal mercader, qui vol aytant dir, que aquell a qui lo dit comandatari la haura tramesa que no se n'entremetra ni la procurara, axi com fer se devria e mester seria, axi com lo dit comandatari faera si la dita comanda hagues portada ab si, segons que era empres entre ell e aquell, qui la comanda li feu; e si per ventura aquell, a qui lo dit comandatari la haura tramesa o enviada, no la vendra o no la haura venuda al for de la terra, segons que semblant roba de aquella valia en aquell loch, on lo dit comandatari la trames, e en lo temps que la dita comanda hi fo arribada; si la dita comanda sera venuda a menyscap o a menyspreu, lo dit comandatari es tengut de retre e de donar a aquell qui la comanda li feu o li haura feta, tot aytant com aquell, qui la comanda li feu, pora provar e en ver metre, que semblant roba o mercaderia o part d'aquella valia o ha valgut en aquell loch, on lo dit comandatari la haura tramesa. Empero es axi a entendre, que aquell loch, on lo dit comandatari haura tramesa la dita comanda, que fo stat empres entre ell e aquell qui la comanda li haura feta. E si lo dit comandatari haura tramesa la dita comanda en altre loch, lo qual no sera stat empres entre lo dit comandatari e aquell qui la comanda li haura feta, sia e deu esser en assalt e en voluntat d'aquell, qui la comanda li haura feta, de pendre e elegir deis dits lochs, en qual la dita roba o comanda o semblant o part d'aquella mes valra o haura valgut en aquell temps que la dita comanda hi fo arribada, e en-

trusted to him the said commission. And if by chance he to whom the said commission has been transmitted shall sell it at a depreciation from his negligence, or because he is a bad merchant, which means to say, that he to whom the said commissioner has transmitted it, does not busy himself with it or manage it as he ought to do and as is incumbent upon him, according as the said the commissioner would have done if he had carried the said commission with him, according to what was agreed upon between him and the person who entrusted to him the commission; and if by chance he to whom the said commissioner has transmitted and consigned it, shall not sell it or shall not have sold it at the market price of the country according to what similar goods to them would be worth in that place, whither the said commissioner has transmitted them and at the time when the said commission has arrived there, if the said commission shall be sold at a depreciation or disadvantage, the said commissioner is bound to restore and to pay to him who entrusted to him the commission all the prices which he who entrusted to him the commission can prove or verify, that similar goods or merchandise or part of them were or had been worth at that place, whither the commissioner transmitted them. It is to be understood, however, that the place whither the said commissioner has transmitted the said commission, shall have been agreed upon between him and the person who entrusted to him the commission. And if the said commissioner shall have transmitted the said commission to another place, which has not been agreed upon between the said commissioner and him who entrusted to him the commission, it should be and ought to be at the option and will of him who entrusted the commission to take and choose of the two places that at which the said or similar goods and merchandise, or part of them, were of most value, or would have been of most value at the time when the said commission arrived,

cara hi fo venuda: e aco desusdit sia e deu esser fet menys de tot frau e de tot contrast. E tot aco desusdit es tengut lo dit comendatari de donar e de livrar a aquell, qui la comanda li haura feta, sens tot contrast; perco car ell no feu, ni ha attes a aquell, qui la comanda li feu, les convinences que d'ell a ell foren empreses, com ell la dita comanda rebe, ans haura fet lo contrari; perque es rao, de tot dan que l'comandatari ne sostenga. Encaro per altra rao, car no es rao n'egualtat, ne deu esser, que algu haia ne dega haver poder en aco d'altre, sino tan solament aytant com aquell de qui es li n'dara o li n'haura donat; e aquell aytal no deu esser dit mercader ne comandatari, ans deu esser dit planament robador; e d'aquell aytal deu esser fet axi com de robador, e en aquella pena posat que robador deu haver, que assats deu esser dit robador, pus que ell se n'vol portar la roba d'altri, malgrat o sens voluntat de aquell de qui sera. Salvant empero al dit comandatari raons justes, si posar les volra e en ver metre les pora, devenli esser rebudes. E salvant encara totes altres convinences o empressions, que entre ells seran stades o empreses o fetes: car segons les dites convinences o empressions, de qualque fet que sia o cas, deu esser declarat o determinat, si donchs la una part o l'altra justes excusacions o justes raons o justes impediments mostrar no pora, per que les convinences o empressions entre ell fetes noure no li puguen. E per les raons desusdites fon fet aquest capitol.

Capitol ccxxxv. Com comandatari deu esser cregut per

Si algu[1] o alguns faran o hauran feta comanda a algun senyor de nau o leny de diners o de roba, sia que lo dit comandatari aport o reta compte de guany o consumament, lo dit compte le deu esser rebut. Salvo

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Si algu] Esp. 124, chapter ccxlii. commences here with the Rubric "Si algu o alguns feran o auran feta comanda a alcun." The words Senyor de nau o de leny are added in black ink.

and further, was sold; and this as abovesaid should and ought to be done without any fraud or any dispute. And the said commissioner is bound to pay and hand over all as abovesaid to him who entrusted to him the commission without any dispute, because he has not performed nor kept towards him who entrusted to him the commission, the engagements which were made by one with the other when he took charge of the commission; on the other hand, he has done the contrary, wherefore it is reasonable that the commissioner should support the whole loss. Further, on another ground, for it is not reason nor equity, nor ought to be, that any one should or ought to have power over the property of another, except so far only as he to whom the property belongs shall give or shall have given it; and such a person ought not to be called a merchant or a commissioner, but plainly a robber, and such a person ought to be treated as a robber, or be subjected to the same punishment as a robber, for he ought certainly to be called a robber, since he seeks to carry away the goods of another against the will or without the consent of him to whom they belong. Saving, however, that to the said commissioner all just excuses should be allowed if he can and is desirous to make out their truth. And saving likewise all other engagements or ageements which have been settled or undertaken or made between them; for according to the said engagements or agreements, upon whatever fact a question may arise, it ought to be declared and determined, unless the one party or the other can show just excuses, or just reasons, or just impediments why the said engagements or agreements made between them cannot prevail against him. And for the reasons above stated this chapter was made.

Chapter ccxxxv. When a commissioner ought to be believed

If any person or persons intrusts or has intrusted a commission of money or of goods to any managing owner of a ship or vessel, if the said commissioner brings in or renders an account of the profit or loss, the said account ought to be received. Saving, however, that if

son sagrament.

empero que, si aquells qui la comanda li hauran feta, han dubte que lo dit compte, que ell ret, que sia just e leal, los dits qui la comanda li hauran feta lo poden fer jurar e haver del dit comandatari un sagrament, ja aquell compte, que l's ret, si es just e si es axi com ell diu. E si lo dit comandatari dira per lo sagrament que ell ha fet, que lo dit compte, que ell los dona e l's ret, es just e leal, los dits, qui la dita comanda li hauran feta, no l'poden de res als apremiar ne destrenyer, si donchs lo contrari provar no li poran; e ells han e deven rebre lodit compte, sia que en lo dit compte se tropia guany o consumament. E es rao, que als no y deia haver, que par com algu comana lo seu a altre, que fe ha en ell, que si ell fe no havia en ell, no li comanaria o no li haguera comanat lo seu; per que es rao e egualtat que aquells, qui fan les comandes, hagen fe en aquells a qui fan les comandes, sia que ells les reten ab guany o ab consumament, tot en axi com la y havien quant les comandes li feren; si donchs lo contrari, segons que desus es dit, provar no li poran. E si lo contrari provar no li poran, tot comandatari deu esser cregut par son sagrament, sens tot altre destret. E aco es us de mercaderia plana, en qualsevol manera que la comanda sia stada feta. Perque quascu s'guart a qui comanara lo seu e aqui no, e com e com no. E per les raons desusdites fon fet aquest capitol.

Capitol ccxxxvi. De avinences entre patro e mercaders per roba nolieiada.

Si mercaders [1] nolieiaran alguna roba a algun senyor de nau o leny ab carta o ab testimonis, lo senyor de la nau o leny es mester que attena als dits mercaders tot co que en la dita carta sera contengut e tot co que los dits testimonis hauran ọit, com lo dit nolieiament se feu. Salvo empero, que si lo senyor de la

[1] *Si mercaders*] Esp. 124, chapter ccxliii. here begins with the Rubric "Si mercaders hauran noliejada "alguna roba a alcun senyor de "nau."

he, who entrusted the commission, has doubts that the said account which he renders is correct and loyal, he who has entrusted to him the commission may require the said commissioner to swear and make oath that the said account which he renders is just and such as he says it to be. And if the said commissioner shall say upon his oath which he has made, that the said account which he gives in and renders is just and loyal, the said persons who have entrusted to him the said commission cannot press or constrain him in any way, unless they can prove the contrary; and they have and ought to accept the said account, whether there be found profit or loss in the said account. And it is reasonable that it should not be otherwise; for when a person entrusts his property to another, he has faith in him; for if he had not faith in them, he would not entrust nor have entrusted his property; wherefore it is reason and equity that they who entrust commissions should have faith in those to whom they entrust the commissions, whether they return to them with gain or with loss, equally as when they entrusted to them the commissions; unles they can prove the contrary, according to what has been above stated. And if they cannot prove the contrary, every commissioner ought to be believed upon his oath, without any other constraint. And such is the plain usage of trade, in whatever manner the commission may have been made. Wherefore every person must take care to whom he shall entrust his property or to whom not, and how and how not. And for the above-stated reasons this chapter was made.

Chapter ccxxxvi. Of covenants between the managing owner and the merchants respecting

If merchants have freighted any goods to any managing owner of a ship or vessel in writing or in the presence of witnesses, it is incumbent that the managing owner of the ship or vessel should fulfil to the said merchants all that shall be contained in the said writing, and all that the said witnesses have heard when the said affreightment took place. Saving, however, that if the

nau no haura vista la dita roba com ell la nolieia, ne encara en la dita carta sera o no hauran oit los dits testimonis, sino tan solament que se n'fiara o se n'sera fiat en lo dit del mercader; si lo mercader dira al dit senyor de la nau haver mesa una roba, e ell ne haura mesa altra, es axi a entendre, que si lo dit mercader nolieiara a faix o a costals o a bales o a farcells, e ell dira o fara entenent al senyor de la nau o leny, que en aquells faixs o costals o bales o farcells no ha sino aytant, co es a saber, quantitat sabuda de quintarades, e si al dit senyor de la nau o leny sera semblant que mes hi haia o y dega haver, que l'dit mercader no li haura fet entenent, com la dita roba nolieia, e lo dit senyor de la nau li feu la dita carta o hauran oit los dits testimonis, lo dit senyor de la nau la pot fer pesar. E si ell mes hi trobara, que l'dit mercader no li feu entenent com la nolieia, lo senyor de la nau pot demanar d'aquell mes que trobat hi sera, aytant nolit com ell se volra. Encara, si lo senyor de la nau o leny fara o haura a fer alguna messio per aquella roba a pesar, si ell mes hi trobara que lo mercader no li havia fet entenent com la li nolieia, la messio desusdita deu pagar lo dit mercader. E si lo dit senyor de la nau no y trobara si no axi com lo dit mercader li haura dit, com la dita roba nolieia, si ell ne fa messio, ell la deu pagar del seu propi. E si lo dit mercader havia feta la dita messio, lo senyor de la nau la li deu retre sens tot contrast, pus mes no y haura trobat. Empero lo dit senyor de la nau pot fer pesar la roba ans que s'carreg,

managing owner of the ship has not seen any goods when he accepted them on freight, and they are not set down in the said writing, and the said witnesses did not hear them mentioned, but he has simply trusted to and confided in the word of the merchant, if the merchant shall say to the said managing owner of the ship that he has put certain goods on board, and he has put others, that is to say, that if the merchants shall freight by packages, or by bags, or by bales, or by parcels, and shall say to or make it understood by the managing owner of the ship or vessel that in those packages or bags, or bales or parcels, there is only so much, that is to say, a certain quantity of quintals, and if it shall seem probable to the managing owner of the ship or vessel that he has or ought to have more than the said merchants have led him to understand when they freighted the said goods, and when the said managing owner of the ship made the said charterparty or the said witnesses heard the affreightment, the said managing owner may cause them to be weighed. If he finds there is more than the said merchant led him to understand when he freighted the ship, the managing owner of the ship may claim for the excess as much freight as he shall please. Further, if the managing owner of the ship or vessel shall make or shall have to make any expenditure to weigh those goods, if he finds that there is more than the merchant made him understand when he freighted her, the said merchant ought to defray that expenditure. And if the said managing owner of the ship shall not find it to be otherwise than as the said merchant told him when he freighted the said goods, if he incurs any expense, he must defray it from his own means. And if the said merchant has incurred the said expense, the managing owner of the ship ought to reimburse him without any dispute, since no excess has been discovered. Nevertheless, the said managing owner may cause the goods to be weighed before they are loaded, or there where he goes

goods freighted.

o la on fara port per descarregar. Mas empero, si lo dit senyor de la nau haura vista la dita roba, ans que ell la nolieg e ans que ell faca la dita carta, una o dues vegades, en aquell nolieiament aytal lo dit senyor de la nau no deu ne pot metre contrast. Salvo en aytant, que si a ell es o sera semblant, que lo dit mercader hagues res junt en los dits faix o costals o bales o farcells, despuys que ell los hague noliciats e encara li hague feta la dita carta, lo dit senyor de la nau pot aportar e fer destrenyer lo dit mercader de fer sagrament que ell no y ha res junt en la dita roba, e pusque lo senyor de la nau la pot fer pesar, en axi empero, si lo dit mercader li dix que no y havia sino tan solament quantitat de quintarades sabudes. Mas empero, si lo dit mercader no haura dit ne dira al dit senyor de la nau o leny, sino tan solament ja per quant portara faix o costals o bales o farcells, si certa quantita ell no li dira, ni ell no li demanara quantes quintarades hi haura en lo faix o en lo costal o bala o farcell, lo dit senyor de la nau no la deu fer pesar per alguna rao. Mas si ha dubte que lo dit mercader hi haia alguna cosa junta, despuys que ell los hague vists e noliciats, ell pot destrenyer lo dit mercader del dit sagrament ab la senyoria; e si lo dit mercader fara lo sagrament, deu ne esser cregut, si donchs lo contrari no li sera provat. E si lo dit contrari provat li sera, lo dit mercader es tengut de doblar lo nolit de tota la roba al dit senyor de la nau o leny. Mas es axi a entendre, que ell li deu doblar lo nolit de aco que ell junt li haura, si provat li sera, o de aquell mes de les quintarades, si trobades hi seran, mes que per ventura lo dit mercader no havia fet entenent al dit senyor de la nau com ell la nolicia,

into port to unload them. But nevertheless, if the said managing owner of the ship has seen the said goods, before he accepted them on freight and before he made the said writing, once or twice, in the case of such an affreightment the said managing owner of the ship cannot and ought not to raise any dispute. Saving so much, that if it shall appear to him probable that the said merchant has introduced anything into the said packages or bags, or bales or parcels, after he has freighted them and has made the said writing, the said managing owner of the ship may summon the said merchant and constrain him to make oath that he has added nothing to the said goods, and afterwards the managing owner of the ship may cause them to be weighed, provided indeed that the said merchant has said that he has only a certain quantity of quintals. But, nevertheless, if the said merchant shall not have said nor shall say to the managing owner of the ship or vessel anything further than for how much he will carry packages or bags or bales or parcels, if he has not said what particular number and the managing owner of the ship has not demanded how many quintals there will be in each package or bag or bale or parcel, he ought not to cause them to be weighed for any reason. But if he doubts whether the said merchant has not added something since he has seen and accepted them as freight, he may constrain the merchant to make oath before the local authorities; and if the said merchant makes oath, he ought to be believed, unless the contrary can be proved. And if the contrary can be proved, the said merchant is bound to pay double freight for all the goods to the said managing owner of the ship or vessel. But it is to be understood that he ought to pay double freight for that which he has added, if it can be proved, or for the excess of quintals, if any be found, which by chance the said merchant has not made known to the said managing owner of the ship when he freighted it, and further he shall be at the

e encara estar a merce de la senyoria, per rao dels fals sagrament que ell fet haura. Empero, si la dita roba sera nolieiada a quintarades e per quascun quintar sera estat fet preu sabut, en aco no cal als dir, que a quascu es tengut per tan cert, que ja sab que y ha a fer e que no. E per les raons desusdites fon fet aquest capitol.

Capitol cexxxvii. De empatxament de senyoria sobrevenint a nau nolieiada.

Si mercaders[1] nolieiaran o hauran nolieiat nau o leny en algun loch, si com los dits mercaders hauran nolieiat la dita nau o leny, vendra aqui impediment de senyoria, lo senyor de la nau o leny es tengut de esperar als dits mercaders, per tant temps com entre ell e los dits mercaders sera stat empres, que los dits mercaders lo deguessen haver espatxat. E si com vendra aquell jorn, que los dits mercaders lo deven haver espatxat, lo dit impediment sera exit d'aquell loch, on ells devien o deven carregar, lo dit senyor de la nau o leny es tengut de carregar sens junta que l's mercaders no li son tenguts de fer al dit nolit; mas empero, los dits mercaders li son tenguts de ajudar e pagar la messio que l'dit senyor de la nau haura feta per rao de la espera, que l'dit senyor de la nau haura feta als dits mercaders, en guisa e en manera que l'dit senyor de la nau o del leny no sia damnificat, ni los dits mercaders. E si per ventura lo dit impediment no sera exit del loch on ells devien carregar, ans sera passat aquell jorn, que l'dit senyor de la nau o del leny los era tengut de esperar, e los dits mercaders al

[1] *Si mercaders*] Esp. 124, chapter cexliv. begins here with the Rubric "Si mercaders noliejaran o auran nolieiat nau o leyn en alcun loch."

mercy of the local authorities by reason of the false oath which he has made. Nevertheless, if the said goods shall be freighted by quintals,[1] and for each quintal a given price has been fixed, upon such a case it is not necessary to make any observation, for every person in such a case is bound to know for certain what he ought to do and what not. And for the reasons above said this chapter was made.

Chapter ccxxxvii. Of an impediment of the authorities of the place supervening after the ship has been freighted.

If merchants freight or have freighted a ship or vessel in any place, if when the said merchants have freighted the said ship or vessel, any impediment[2] on the part of the local authorities supervenes, the managing owner of the ship or vessel is bound to wait for the said merchants for so long a time as shall have been agreed upon between him and the said merchants, within which the said merchants ought to despatch him. And if when that day arrives, when the said merchants ought to despatch him, the said impediment has been removed from that place where thay had ought or still ought to load. the said managing owner of the ship or vessel is bound to load without any addition that the merchants ought to make to the freight; but, nevertheless, the said merchants are bound to assist him, and to pay the expenses which the said managing owner of the ship has incurred by reason of the attendance of the said managing owner of the ship upon the said merchants, in such form and manner that the said managing owner of the ship or vessel shall not be damnified, nor the said merchants. And if by chance the said impediment shall not have ceased in the place, where they ought to load, before the day shall be passed, which the said managing of the ship or of the vessel is bound to them to await and on which the

[1] *by quintals*] The obligations of the managing owner in such a case have been discussed in chapters xxxviii. and xli.

[2] *any impediment*] This subject has been discussed in chapters xxxv., cxlvi., cxlvii.

dit senyor de la nau espatxar; lo dit senyor de la nau no es tengut de pus esperar, si ell no s'volra, als dits mercaders, ni los dits mercaders al dit senyor de la nau o leny, si ells no s'volran. Salvo en aytant que los dits mercaders son tenguts de fer la messio, que l'senyor de la nau haura aqui feta sperant los dits mercaders, a coneguda de dos bons homens. E fet aco, pot fer quascu son prou, si fer lo pot, si donchs entre ells qualque convinenca no sera estada feta, que l'un dega esser tengut de esperar l'altre. E si avinenca alguna entre ells no sera, que l'un dega esperar l'altre, e lo dit impediment sera exit de aquell loch on ells carregar devien, si los dits mercaders diran a aquell senyor de la nau o leny, que ells axi com desus es dit havien nolieiat, que ell que pens de carregar, lo dit senyor de la nau o leny no l's n'es tengut, si ell no s'volra, si donchs los dits mercaders ab lo dit senyor de la nau o leny no se n'avendran, ni los dits mercaders a ell, sino axi com desus es dit del fet de la messio; o si los dits mercaders al dit senyor de la nau promes no u hauran. E si per ventura los mercaders nolieiaran nau o leny o hauran nolieiat, e entre lo senyor de la nau o leny e los mercaders dia cert o tems sabut empres no haura, que l'dit senyor de la nau o leny dega esperar los dits mercaders, ne los dits mercaders degan haver espatxat lo senyor de la nau; si lo desusdit impediment aqui vendra, lo dit senyor de la nau no es tengut de esperar los dits mercaders si no volra, ne los dits mercaders al senyor de la nau, si entre ells empres no sera, salvo de la messio desus-

said merchants are bound to the said managing owner of the ship to despatch it, the said managing owner is not bound to attend any longer upon the said merchants if he does not choose, nor are the said merchants bound to the said managing owner of the ship or vessel, if they do not wish it. Saving so much that the said merchants are bound to pay the expenses which the said managing owner of the ship has there undergone in attending upon the said merchants according to the judgment of two Prudhommes. And this having been done, each person may make his profit, if he can make it, unless there has been some agreement made between them, that the one ought to be bound to wait for the other. And if there be no agreement between them, that the one ought to wait for the other, and the said impediment shall be removed from the place where they ought to load a cargo, if the said merchants shall say to that managing owner of the ship or vessel, which they have freighted as above stated, that he ought to think of loading his cargo, the the said managing owner of the ship or vessel is not responsible to them, if he does not choose, unless the said merchants have made an agreement with the said managing owner of the ship or vessel; nor are the merchants responsible to him, except as far as above stated in the matter of expenditure, or unless the said merchants have made any promise to the said managing owner of the ship. And if by chance the merchants shall freight or have freighted a ship or vessel, and no certain day or fixed time has been agreed upon between the managing owner of the ship or vessel and the merchants for the said managing owner of the ship or vessel to wait for the said merchants or for the said merchants to despatch the managing owner of the ship, the said managing owner of the ship is not bound to wait for the said merchants, if he does not wish, nor are the said merchants responsible to the said managing owner, if there has been no agreement between them, except for the expenditure above stated.

dita. E si, com los dits mercaders hauran acabat co que hauran a fer per rao del dit impediment, lo dit impediment sera exit de la terra, si los dits mercaders diran al dit senyor de la nau o del leny, que pens de carregar no l's n's tengut, si ell no s'volra; si donchs los dits mercaders ab ell no se n'avendran o alguna avinenca entre ells feta o empresa no sera, tot en axi com ja es desus dit de nau o leny qui s'dega esperar, e ells a ell espatxar a dia cert o a tems sabut; car, segons dret e segons rao e egualtat no s'deu fer. Car si nau o leny era tengut de sperar a mercaders, tant tro que aquell impediment fos passat, no seria ben fet, que tant poria durar lo dit impediment, que la nau o leny s'y poria de tot consumar, si donchs los dits mercaders ab lo dit senyor de la nau o leny avenguts no se n'seran. Empero, si los dits mercaders diran al senyor de la nau o leny que ell que l's esper, que li son tenguts de tot dan e messio e destrich, que ell ne sostenga; e si los dits mercaders diran axi com desus es dit, lo senyor de la nau los pot e l's deu esperar sobre la rao e les condicions desusdites. E si lo dit senyor de la nau o leny les espera sobre les raons e les condicions desusdites, si y sera aquell impediment o no, o carreguen los mercaders la nau o no, los dit mercaders son tenguts al dit senyor de la nau o leny de tot lo dan e de tota la messio e de tot lo destrich, que ell soffert n'aura o n'espera a sostenir, de tot a restituir sens tot contrast. E si los dits mercaders en les raons e en les condicions desusdites algun contrast metre hi volran, ells son tenguts de restituir tot dan e tota messio e tot destrich e tots interesos, que lo dit

And if, when the said merchants have completed what they have had to do by reason of the said impediment, the said impediment shall be removed from the country, if the said merchants shall say to the said managing owner of the ship or the vessel that he should load his vessel, he is not bound to do so, if he does not wish; unless the said merchants shall agree with him, or some agreement shall have been made and undertaken between them, precisely as it has been already stated with respect to the ship or vessel that it ought to wait for them, and they ought to despatch her by a certain day or a given time, for according to right and according to reason and equity he is not bound to do so. For if a ship or vessel were bound to wait for the merchants until that impediment had passed away, it would not be well, for the impediment might last so long, that the ship or vessel might entirely waste away, unless the said merchants should have agreed with the said managing owner of the ship or vessel to do so. Nevertheless, if the said merchants shall say to the managing owner of the ship or vessel that he should wait for them, that they are responsible to him for all the loss and expense and prejudice which he may sustain, and if the said merchants shall say as above stated, the managing owner of the ship may and ought to wait for them for the reason and upon the conditions above mentioned. And if the said managing owner of the ship or vessel waits for them for the reason and upon the conditions above mentioned, whether there be an impediment or not, and whether the merchants load his ship or not, the said merchants are responsible to the said managing owner of the ship or vessel to make good all the loss and all the expense and all the prejudice which he has suffered or expects to suffer, without any dispute. And if the said merchants wish to raise any dispute with regard to those reasons and conditions above stated, they are bound to make good all the loss and all the expense, and all the prejudice and all the interest,

senyor de la nau o leny per culpa del contrast, que l's dits mercaders hi metran, ne sostendra o n'espera a sostenir. E si lo dit senyor de la nau o leny algun contrast metra als dits mercaders en convinenca o en promissio, que ell los hagues feta, que ell no la l's volgues attendre, si los dits mercaders ne sostendran dan o greuge o messio, lo senyor de la nau los ho deu restituir, si la nau o lo leny ne sabia esser venut. E aquest capitol sia entes de nau o leny, qui encara no fos carregat de tot ne en partida, perco com de nau que ja han levat lur carrech, ja n'hi ha capitols qui n'parlen e u departexen e u esclarexen, de que son tenguts los mercaders als senyors de les naus. Empero, deu esser axi entes, qui si los mercaders qui diran als senyors de les naus o lenys que l's deguen esperar, que los dits mercaders los son tenguts de tot co que desus es dit a attendre e a complir, que entre ells deu haver dia cert o tems sabut, que l'dits mercaders deian haver spatxat lo senyor de la nau o leny, perco que entre ells contrast ne treball no s'puga esdevenir ne creixer. E per les raons desusdites fon fet aquest capitol.

Capitol ccxxxviii. De que son tenguts personers a patro, qui vol fer barca.

Si algu[1] haura en voluntat de fer barca e haura emprats alguns bons homens que li facen part, e los dits bons homens lo y atorgaran o lo y hauran atorgat de fer la dita part, los dits bons homens es mestre que lo y attenen. E si aquell desusdit, que la dita barca volra fer, e a qui los dits bons homens hauran promes de fer la dita part, si aquell, qui la barca fara o fer fara, no dira e ja la barca si sera poca o gran, ne aquells qui la part li hauran promesa de fer no li

[1] *Si algu*] Esp. 124, chapter ccxlv. here commences with the Rubric "Si alcun aura en volentat de fer barca e ell haura emprats alcuns bons homens."

which the said managing owner of the ship or vessel by fault of the dispute, which the said merchants have raised, shall sustain or expect to sustain. And if the said managing owner of the ship or vessel shall raise any dispute with the said merchants respecting an agreement or promise which he shall have made and which he does not wish to observe, if the said merchants shall thereby sustain any loss or prejudice or expense, the managing owner of the ship is bound to make it good, even if the ship or vessel has to be sold. And this chapter ought to be understood of a ship or vessel, which is not yet loaded in whole or in part, because of the ship which has already taken on board her cargo, there are chapters[1] which speak of and determine and declare how far the merchants are responsible to the managing owners of ships. Nevertheless it is to be understood, that if the merchants shall say to the managing owner of the ships or vessels that they ought to wait, the said merchants are bound to observe and perform all that has been above stated, as there ought to be a certain day and a given time within which the said merchants ought to have dispatched the managing owner of the ship or vessel, so that no dispute or trouble may arise or grow up between them. And for the reasons above stated this chapter was made.

Chapter ccxxxviii. Of the liability of partowners towards the managing owner, who wishes to build a boat.

If any one has a wish to build a boat, and has requested certain substantial men to take a share in it, and the said substantial men agree and have agreed to take a share in it, it is incumbent on the said substantial men to fulfil their agreement. If the aforesaid person, who wishes to build the said boat, and to whom the said substantial men have promised to take a share, and who shall build or cause to be built the boat, shall not say, whether the boat is to be small or large, and those who have promised to take a share have not asked

[1] *chapters*] This subject has been discussed in chapters xxxv., xxxvi., xxxvii., lviii., and lix.

demanaran, si sera gran o poca, ne quant pora costar, ne quant no, ne de quines mesures sera, ne de quin port: si aquell desusdit fara o fara fer la dita barca, sia que la faca gran o poca, los dits bons homens qui les part li hauran promeses de fer, es mester qui li u attenen sens tot contrast. Empero, si aquell qui la dita barca fara o volra fer, dira o fara entenent a aquells, qui la part li hauran promesa de fer, quina barca fara e quina no, e de quin gran sera e quant costara, si aquell desusdit haura dit o fet entenent co que desus es dit a aquells qui les dites parts li hauran promeses de fer, si ell fara major barca, que ells no haura fet entenent e de majors mesures, los dits bons homens no li son tenguts de fer junta alguna, si no axi com ell los o feu entenent. E si la dita barca sera major e costara mes, que no l's haura fet entenent, los dits bons homens hi deven haver la dita part que li prometeren de fer, tot en axi com si li havien fet compliment en tot aquell creix que ell fet haura, sens tot contrast, pusque sens sabuda e sens voluntat de l's dits bons homens, que la part li prometeren de fer, ho haura fet. Empero, si ell ho haura fet ab consentiment e ab voluntat de tots los desusdits, o de la major partida, ells li son tenguts de fer compliment, segons que ja en lo capitol desusdit es contengut. Empero, si algu qui barca volra fer, dira o fara entenent a aquells qui part li prometran, que ell fara barca, e ell no fara barca, ans fara o fara fer leny, si ell fara lo dit leny sens sabuda o sens consentiment e voluntat de aquells qui

if it is to be large or small, nor how much it will cost or how much not, nor of what dimensions it is to be, nor of what burden, if the aforesaid person shall build or cause to be built the said boat, whether he builds it large or small, it is incumbent that the said substantial men who have promised to take a share in it, should fulfil their promise without any dispute. Nevertheless, if he who has built or wished to build the said boat shall say or make it understood to those persons who have promised to take a share in it, what sort of boat he will build and what not, and of what size it shall be, and how much it shall cost, if the aforesaid person has said or caused to be understood what is above said to those who have promised to take the said shares, if he builds a larger boat than he made them to understand, and of greater dimensions, the said substantial men are not bound to make any addition, but only according as he has given them to understand. And if the said boat shall be larger or shall cost more than he made them understand, the said substantial men ought to have that share in the boat which they promised to take, precisely as if they had contributed their compliment to the increase which he has made, without any dispute, since he has made it without the knowledge and assent of the said substantial men. Nevertheless, if he has made it with the consent and good will of all the abovesaid persons, or of the greater part, they are bound to contribute their complement according to what is contained in the abovesaid chapter.[1] Nevertheless, if any one who wishes to build a boat, shall say or make it understood by those who shall promise to take a part, that he will build a boat, and he shall not build a boat, on the contrary shall build or cause to be built a vessel, if he shall build the said vessel without the knowledge and consent of those who promised to take a share in the boat, they

[1] *chapter*] Chapter v. is probably referred to.

part li prometeren de fer en la dita barca, ells no li son tenguts que li attenen alguna cosa, que promes li haien, perco car ell no haura attes a ells co que ab ells havia empres. E es rao que axi com ell no atten res, que promes los hagues, axi es rao que ells no li attenen res que promes li haguessen. Empero, si ell fara lo leny desusdit ab sabuda e ab consentiment e ab voluntat dels dits personers o de la major partida, los dits personers li son tenguts de fer compliment de la dita part, que promesa li hauran de fer, pus ab consentiment e ab voluntat de tots o de la major partida ho haura fet. E si per ventura algu fara entenent a aquells, qui li hauran promesa de fer part, que ell fara leny, e ell no fara leny, ans fara nau, si ell la fara sens consentiment e voluntat de aquells, que li prometeren de fer part en lo dit leny, ells no li son tenguts de attendre co que promes li hauran, sino en aytal guisa e manera que si ell fara del leny nau sens sabuda e voluntat dels dits personers, que los dits personers hagen axi en la dita nau com devien haver en lo dit leny, e per aytants diners com la part que ells havien promesa de fer en lo dit leny costara o haguera costat o deguera costar; si donchs no sera axi fet com en lo capitol desusdit es declarat, on parla de senyor de nau o de leny, qui comencara de fer nau o leny en forma poca; e encara que sia observada la esmena, que sobre lo dit capitol es estada feta. E allo sia entes de tota nau o de tot leny, qui s'fera de nou en les estepes, o ans que sia exit del loch on sera estat fet de nou. E per les raons desusdites fon fet aquest capitol.

are not bound to fulfil any thing which they have promised, because he has not kept his agreement with them. And it is reasonable as he has not fulfilled what he has promised to them, that they should not fulfil what they have promised to him. Nevertheless, if he shall build the abovesaid vessel with the knowledge and the consent and the good will of the said partowners, or of the greater part, the said partowners are liable to make up the complement of the said share, which they have promised to take, since he will have done it with the consent and good will of all, or of the greater part. And if by chance any one has made it understood to those who have promised to take shares, that he will build a vessel, and he shall not build a vessel, on the contrary shall build a ship, if he shall build it without the consent and good will of those who promised to take shares in the said vessel, they are not bound to keep the promise which they have made, except in such form and manner, that if he shall make of the vessel a ship without the consent and good will of the said partowners, the said partowners shall have such shares in the said ship as they ought to have had in the said vessel, and for the same money as the shares which they promised to take in the said vessel would cost or would have cost, or ought to have cost; unless it should be done as is declared in a previous chapter, where the managing owner of a ship or vessel is spoken of, who commences building a ship or vessel on a small scale, and further, the amendment [1] should be observed which has been made in the abovesaid chapter, and this should be understood of every ship or vessel which shall be constructed anew in a dock or before it is launched from the place, where it has been constructed anew. And for the reasons abovesaid this chapter was made.

[1] *the amendment*] This is contained in chapter vi.

Capitol ccxxxix. De nau, qui gitara.

Si algun[1] senyor de nau o leny surgira en algun loch o haura surt ab voluntat dels mercaders, si estant aqui la nau o leny surt se metra tan fort temporal, que solament la dita nau o leny d'aquell loch levar no s'pora, ans haura a gitar de la roba gran part, qui en la nau o leny sera, o quasi tota, sia que los mercaders facen gitar o gitaran sens que no u faran a saber ne u diran al senyor de la nau o leny, o sia que l'senyor de la nau o leny gitara o fera gitar sens que no u dira als mercaders, qui en la dita nau o leny seran; d'aquest git, qui per aytal rao com desus es dit sera estat fet e per lo cas desus dit, los dits mercaders no poden fer demanda al dit senyor de la nau o leny, ni lo dit senyor als dits mercaders; perco car git qui per aytal rao sia stat fet o esdevengut, no s'deu ne s'pot jutiar per dret ne per pla git, ans se deu e s'pot jutiar quasi per semblant de naufraig, e mes per semblant de naufraig que de git, e per les raons desusdites no poden fer demanda lo un al altre, per rao del cas e de les raons desusdites. E axi lo git desusdit deu esser comptat per sou e per livra o per besant, segons que git sera, e la nau o leny es tengut de metre per dues parts d'aco que valra; perco, car si fos git pla, no y fora tengut si no per la mytat de aco que valra, e per tal rao hi met les dues parts, perco car no es naufraig entegrament, que si fos naufraig entegrament la dita nau o leny pagara en lo dit naufraig per tot co que

[1] *Si algun*] Esp. 124, chapter ccxlvi. begins here with the Rubric "Si algun senyor de nau o de "leyn surgira en alcun loch o aura "surt." The words "ab voluntat "dels mercaders" are added in black ink.

Chapter cexxxix. Of a ship, which casts overboard.

If any managing owner of a ship or vessel shall have brought up in any place with the consent of the merchants, if whilst the ship or vessel is riding there so strong a tempest comes on that not only the said ship or vessel cannot get out of the place, but has to cast overboard a great part of the goods which are in the ship or vessel, or nearly all the goods, whether the merchants cause them to be cast overboard, or cast them overboard themselves, without making it known or saying anything to the master of the ship or vessel, or whether the managing owner of the ship or vessel cast them overboard or cause them to be cast overboard without speak- to the merchants who are on board of the said ship or vessel; for this jetison, which shall have been made for such reason as aforesaid and for the case above stated, the said merchants cannot make any claim against the said managing owner of the ship or vessel, nor the said managing owner against the said merchants; because a jetison which has been made and has happened for this reason cannot be judged as a regular and ordinary jetison, on the contrary, it ought to be judged as something resembling a shipwreck, and as more like a case of shipwreck than a case of jetison, and on the grounds above said neither party can make a claim against the other by reason of the case and of the considerations aforesaid. And accordingly the aforesaid jetison ought to be counted by shillings and pounds, or by besants, according to what the jetison has been, and the ship or vessel is bound to contribute two thirds of its value, for if it were ordinary jetison it would not be bound to contribute more than half its value,[1] and for this reason it contributes two thirds, because it is not complete shipwreck, for if it were complete shipwreck the said ship or vessel would pay its full value[2] in the said

[1] *half its value*] This is laid down in chapter liii.

[2] *full value*] This subject is discussed in chapter cl.

valia. Per qual rao paga les dues parts? Perco, car no es naufraig ne git pla, ans es quasi semblant de naufraig, e mes naufraig que git. E si per ventura la dita nau o leny perdra exarcia alguna, axi com ancores o gumenes o barques o alguna altra exarcia, en los cas desus dit deu esser tot comptat per sou o per livra, perco car no es git pla ne s'deu ne s'pot jutiar per git pla, ans es mes semblant de naufraig que de git; que si git pla fos, e les barques estiguessen ormeiades de popa o a lats de la nau o del leny, e l's fallien los caps, e omplien e s'perdien, serien perdudes al dit senyor de la nau o leny, guardas se ell ja quins caps los daria, o quins los faria donar. E si era git pla, e li fallien gumenes, e les ancores se perdien, hon eren ormeiades, les dites gumenes deven esser perdudes a la nau o leny, que l'mercader no y es tengut de res a metre, ne encara la roba sua qui romasa li sera. Empero, si algun mercader o mercaders gitaran o faran gitar sens que no u faran a saber al senyor de la nau lo leny, ne ab consentiment ne ab sabuda del dit senyor, e los dits mercaders gitaran o faran gitar, que aquella nau o leny sia surta o que vaia ab veles, e co, que ells gitaran o faran gitar, pora esser dit e en ver mes que pusca esser git pla, lo senyor de la nau o leny en aquell git aytal no es tengut de metre part per si ne per la nau, si ell no 's'volra. E si per ventura mercader o mercaders haura en la nau o leny, e lo senyor de la no la nau o leny gitara sens sabuda e sens consentiment dels dits mercader o mercaders, lo dit senyor de la nau o leny es tengut de retre als dits mer-

shipwreck. For what reason does it pay two thirds? Because it is not ordinary shipwreck, on the contrary it is all but shipwreck, and rather shipwreck than jetison. And if by chance the said ship or vessel shall lose some of its apparel, as, for instance, anchors or cables, or boats, or any other apparel, in the cases above mentioned, all ought to be reckoned by shillings and pounds, because it is not ordinary jetison, and cannot nor ought not to be judged by the rules applicable to ordinary jetison, on the contrary, it is more like shipwreck than jetison, for if it were ordinary jetison, and the boats were hoisted and fastened on the poop or to the sides of the ship or vessel, and the ropes gave way and the boats filled and were lost, the loss would fall upon the managing owner of the ship or vessel, who should take care what ropes he supplies or causes to be supplied. And if it were ordinary jetison, and the cables gave way and the anchors were lost where they were laid out, the loss of the said cables would fall upon the ship or vessel, for the merchant is not bound to contribute anything nor his goods which are saved. Nevertheless, if any merchant or merchants shall cast or cause to be cast overboard anything without making it known to the managing owner of the ship or vessel, and without the consent or knowledge of the said managing owner, and the said merchants shall cast or cause to be cast overboard anything in order that the said ship or vessel may ride in safety or may get under sail, and that which they have cast or caused to be cast overboard can be stated and it can be verified that it is a case of ordinary jetison, the managing owner of the ship or vessel in such a case of jetison is not bound to contribute for himself or for the ship if he does not choose to do so. And if by chance a merchant or merchants shall be in the ship or vessel and the managing owner of the ship or vessel shall cast overboard anything without the knowledge and consent of the said merchant or merchants, the said managing owner of the ship is

caders aquella roba que ell, axi com desus es dit, haura gitada o feta gitar, o lo preu. Empero es axi a entendre, que aquell git fos o pogues esser dit, que fos git pla, car git pla vol aytantdir, que no l's sobras temporal e que los uns poguessen haver acort e consell dels altres. Empero, si en la nau o leny mercader algu no haura, lo senyor de la nau o leny pot fer gitar ab consell de tot lo cominal de la nau o leny o de la major part, si espay ne haura. Empero si soptosament temporal los forcara, e lo senyor de la nau gitara o fara gitar sens que ab los desusdits acort ne consell haver no pora, sia tenguts per tan ferm com si tots los mercaders hi fossen, e tan ferm com si tota la roba fos sua, que sua es, pus en comanda la te. Empero si, com lo git sera stat fet, lo temporal desusdit sera abonancat de tot o de partida o no, e la nau o leny se levara del dit loch, on lo cas desusdit li sera esdevengut, si la dita nau o leny si n'levara ab voluntat dels dits mercaders, e lexara aqui alguna exarcia ab voluntat de ells, sia que en la dita nau o leny haia romasa exarcia, ab que puga anar e navegar sanament en aquell loch on devia descarregar o no; la dita exarcia que romasa sera, axi com desus es dit, si s'pert, deu esser comptada sobre la roba que romasa sera e salvada sera, o lo cors de la nau deu hi metre per la meytat d'aco que valra. E si per ventura la dita exarcia no s'perdra, que sera romasa, ans se salvara ab averies que hom ne haura a

bound to make good to the said merchants the goods which he, as above said, has cast or caused to be cast overboard, or their value. Nevertheless, it is to be understood that such jetison was and may be said to be a case of ordinary jetison, for ordinary jetison means that there is no sudden tempest, and that one merchant may take counsel and advice with another. Nevertheless, if there be any merchant in the ship or vessel, the managing owner of the ship or vessel may cast goods overboard upon consultation with the whole company of the ship or vessel, or of the greater part, if he can delay.[1] Nevertheless, if a tempest shall suddenly force them, and the managing owner of the ship or vessel shall cast or cause to be cast overboard any goods without being able to consult and agree with the abovesaid persons, it shall be held to be as valid as if he had demanded their advice, and as valid as if all the merchants had been there, and as valid as if all the goods were his own, for they are to be regarded as his own when they are committed to his charge. Nevertheless, if, when the jetison has been made, the tempest aforesaid shall have calmed down altogether, or in part only, or not at all, and the ship or vessel shall have been got under weigh from the said place where the event above mentioned has taken place, if the said ship or vessel shall have been got under weigh at the desire of the said merchants, and shall leave behind some apparel at their desire, whether or not there remains on board of the said ship or vessel enough of apparel with which she can go and sail securely to that place where she ought to discharge, the said apparel which remains, as above said, if it be lost, ought to be reckoned against the goods which remain and are saved, and the hull of the ship ought to contribute for half its value. And if by chance the apparel which has been left behind shall not be lost, on the contrary it has been saved by expenses which

[1] *delay*] Chapter liv. enjoins a previous consultation with the ship's company.

fer o n'fara, aquelles averies deven esser comptades, axi com desus es dit de la exarcia, si perduda fos; empero es axi a entendre, que lo dit git no fos pla, ans deu esser entes, que fos git semblant a naufraig. E si per ventura lo git sera pla e no sera semblant de naufraig, e la dita exarcia romandra, axi com desus es dit, ab voluntat dels dits mercaders, sia que la dita exarcia se perda del tot o en partida, e que hom ne haia a fer averies per aquella exarcia perduda o les averies fetes per ella; deu esser comptat tot per sou e per livra sobre la roba que salvada sera e restaurada, e lo cors de la nau o leny no y pag res, perco comme la nau o leny assats pert, pusque s'leva del loch desusdit e s'met a ventura de navegar ab voluntat dels dits mercaders la, on ells volran e al cominal de la nau sera vist que sia faedor. E si per ventura en la nau o leny no haura ne y romandra exarcia, ab que la dita nau o leny puga anar ne navigar en aquell loch on descarregar devia, ans se n'haura a tornar en aquell loch, on lo dit viatge sera stat levat e la dita nau o leny haura carregat, lo dit git o contrast que entre lo senyor de la nau o leny e los dits mercaders sera per lo cas desusdit que esdevengut los sera, deu esser determenat en aquell loch, on la dita nau carrega e encara hi sera tornada per lo cas desusdit. Empero es axi a entendre, que si lo dit cas de ventura los sera esdevengut pasada mija via

have to be paid on its account, these expenses ought to be reckoned precisely as has been stated with regard to the apparel if it should be lost, nevertheless it is to be understood that the said jetison is not ordinary jetison, on the contrary, it should be understood that it is jetison resembling shipwreck. And if by chance the jetison should be ordinary and not resembling shipwreck, and the said apparel be left behind, as above said, at the desire [1] of the merchants, whether the said apparel be lost entirely or in part, and expenses have to be defrayed for that lost apparel, or for expenses incurred on its account, the whole ought to be reckoned by shillings and pounds against the goods which have been saved and recovered, and the hull of the ship pays nothing thereto, because the ship or vessel has lost enough since it set sail from the place above mentioned, and undertook the risk of navigating, at the desire of the merchants, to the place where they wished, and as it seemed fit to the ship's company that it should do. And if by chance there should not be nor remain in the said ship or vessel apparel with which the said ship or vessel can go and navigate to that place where it ought to discharge, on the contrary, it should have to return to the place whence the said voyage was commenced, and where the said ship or vessel has loaded her cargo, the said jetison, or the dispute which shall arise between the managing owner of the ship or vessel and the said merchants upon the aforesaid accident, which has happened to them, ought to be determined in that place where the said vessel took in her cargo, and to which she has returned owing to the accident aforesaid. It is to be understood, however, that if the said case of misfortune shall have come upon them after half of the way [2] has been passed,

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[1] *at the desire*] A similar rule is laid down in chapter lxiv.

[2] *half of the way*] This provision is in accordance with the rules of valuation laid down in cases of jetison in chapter lii.

avant, deu esser determenat en aquell loch on la dita nau o leny devia descarregar, jat sia aco que la dita nau o leny sia o fos tornat en aquell loch, on carrega o havia carregat. Empero, si lo dit cas sera esdevengut ans de mija via d'aquell loch on devian descarregar, deu esser determenat alla on la dita nau o leny carrega, si ab aco que romas li sera hi sera tornada. E si lo dit senyor de la nau o leny demanara nolit, axi de la roba perduda com de la savalda, deu li esser donat, e ell per aquell nolit deu ajudar a la roba que perduda sera e gitada; e si ell no l'ne demanara, ne pendre no l'ne volra, per aquell nolit ell no es tengut de res a metre en lo dit cas. E si lo dit senyor de la nau o leny volra haver nolit de la roba que salvada sera, ell es tengut de complir lo viatge ab aquella roba que salvada sera e de que ell demanara lo nolit als dits mercaders. E si lo dit senyor de la nau o leny no volra nolit de la roba perduda ne de aquella qui salvada sera, lo dit senyor de la nau no es tengut de complir lo viatge als dits mercaders, si ell no s'volra, perco que lo senyor de la nau assats hi ha de perdua, pus que y haura consumada la sua persona e encara haura perdat son temps e sa vianda e encara sa nau o leny en partida consumat. Salvo empero que sia axi entes, que los dits mercaders fossen o sien en lochs menys de perill, e que fossen en terra de amichs e que fossen en loch on trobassen nau o leny, qui la roba que romasa los seria los volgues

it ought to be determined in that place where the said ship or vessel ought to discharge, notwithstanding that the said ship or vessel should be and have returned to the place where she took in her cargo. If, however, the said accident shall have happened short of midway from the place where they ought to discharge, it ought to be determined there where the said ship or vessel took in her cargo, if she has returned with what remained. And if the said managing owner of the ship or vessel shall claim freight of the lost goods equally as of the goods saved, it ought to be paid to him, and he ought for that freight to contribute[1] towards the goods which have been cast overboard and lost; and if he does not claim it, and does not desire to receive it, he is not bound to contribute anything for that freight in the said accident. And if the said managing owner of the ship or vessel desires to have freight for the goods which shall be saved, he is bound to complete the voyage with the goods which have been saved, and for which he claims freight from the said merchants. And if the said managing owner of the ship or vessel does not wish to have freight for the goods which are lost, nor for the goods which have been saved, the said managing owner of the ship is not liable to complete the voyage for the said merchants, if he does not desire it, because the managing owner of the ship has had enough of loss, since he has consumed his strength and likewise has lost his time and his food, and further, has partly wasted his ship or vessel. Saving, however, that it should be understood, that the said merchants were and are in a place free from peril, and that they are in the land of friends, and that they are in a place where they can find a ship or vessel, which is willing to carry for their money the goods which

[1] *to contribute*] This is in accordance with the rule laid down in chapters liii. and cli. Certain modifications of the rule are considered in chapter ccli.

portar ab lurs diners. E aquell pati que l'senyor de la nau o leny fara ab los mercaders, a aquell pati meteix deven esser los mariners. E per les raons desusdites fon fet aquell capitol.

Capitol ccxl. De nau o leny, qui per cas fortuit se haura a levar.

Si alguna[1] nau o leny sera nolieiada que dega anar carregar en algun loch, si com aquella nau o leny sera junt en aquell loch on devra carregar, e stant la nau o leny en aquell loch on devra carregar, se metra temporal tan gran, que la nau o leny se n'haura a levar ans que no haura levat lo carrech, que levar devia, o per ventura hi vendran lenys armats de enemichs o n'vendra certenitat que hi deven venir; si aquella nau se n'haura a levar per alguna de les raons desusdite s ans que no haura levat lo carrech per qui era venguda e estada nolieiada, e haura se n'a tornar per ventura en aquell loch, d'on parti e fo nolieiada; si lo dit senyor de la nau o leny contrastara ab aquells qui l'nolieiaren que ell no y volra tornar, quant que haia bones noves o que lo dit temporal sia abonancat, ans los demanara lo nolit, que ells li prometeren de donar com lo nolieiaren, lo dit senyor de la nau o leny es tengut de tornar. E si per ventura tornar no y volra, la senyoria la deu destrenyer que y torne, e si ell per nulla rao tornar no y volra, los dits mercaders poden nolieiar alguna nau o algun leny semblant de aquell; e si l's costa mes que aquell no fahia, aquell senyor de aquella nau o leny, que ells primer havien nolieiat, deu pagar aquell mes que als dits mercaders

[1] *Si alguna*] Esp. 124, chapter ccxlvii. begins here with the Rubric "Si alguna nau o leyn sera "noliejat que deja anar carregar "en algun loch." The words "en "lo quel sera junt e se n'haura a "levar" are added in black ink.

remain to them. And the bargain which the managing owner of the ship or vessel shall make with the said merchants, to the same bargain the mariners [1] are likewise bound. And for the reasons abovesaid this chapter was made.

Chapter ccxl. Of a ship or vessel, which from an accident has to weigh anchor.

If any ship or vessel has been chartered to go and load in any place, if when that ship or vessel shall have arrived at the place where it ought to take in cargo, and whilst the ship or vessel is staying in the place where it ought to take in its cargo, so violent a tempest should arise, that the ship or vessel has to get under weigh before she has taken on board the cargo, which she ought to take on board, or by chance armed ships of an enemy have arrived, or certain news arrives that they are to be there; if the said ship has to weigh anchor for any of the above reasons before she has taken in the cargo, for which she came there and has been chartered, and has to return by chance to the place, whence she set out and was chartered; if the said managing, owner of the ship or vessel shall object to the charterers, that he does not wish to return until he has good news, or until the said tempest has calmed down, and notwithstanding this shall claim the freight which they promised to pay when they chartered her, the said managing owner of the ship or vessel is bound to return. And if by chance he is not willing to return, the local authorities ought to constrain him to return, and if he will not on any account return, the said merchants may hire any ship or vessel like his, and if it cost more than his ship or vessel cost, the managing owner of the ship or vessel which they have first chartered ought to pay the excess of the cost to the said merchants; and if he is

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[2] *the mariners*] The principle of the mariners' wages being reduced in proportion to any reduction of freight is affirmed in chapter lix.

costara; e si ell simplament pagar no u volra, la senyoria lo n'deu destrenyer, si la nau o leny ne sabia esser venut. Encara mes los dits mercaders no li son tenguts de donar lo nolit, pus que ell no l's haura portada aquella lur roba, que ells havien nolieiada, ni es romas en lur culpa. Salvo empero sia entes, que si aquells, qui l'havien nolieiat, no li havien attes co que ab ells havia empres com lo nolieiaren, e per culpa o per negligencia dels mercaders se n'sera hagut a tornar menys de la lur roba, lo dit senyor de la nau o leny no y es tengut de tornar, ans li son tenguts de pagar son nolit, pusque per culpa dels dits mercaders se n'sera hagut a tornar menys de la roba. E si per ventura no sera culpa dels dits mercaders, e lo senyor de la nau o leny hi volra tornar, e si los mariners contrastaran que ells no y volran tornar, no u poden fer ne deven per alguna rao, pusque en culpa no sera stat del senyor de la nau o leny, ne encara en culpa dels mercaders, sino tan solament per los casos damunt dits. Salvo empero, que si la nau o leny havia lexada alguna exarcia o alguns homens en terra en aquell loch, d'on se hagueren a levar per los casos desusdits, lo senyor de la nau o leny es tengut de metre exarcia a esmena d'aquella que lexada haura, e encara metre homens en esmena de aquells qui alla seran romasos. E si per ventura lo senyor de la nau o leny fer no u volra, los dits mariners no y son tenguts de tornar, si ells no s'volran, ne lo senyor de la nau o leny no l's pot destrenyer per alguna rao, pusque ell no l's volra fer compliment d'aco que desus es dit. E per aco fon fet aquest capitol.

not willing simply to pay it, the local authorities ought to constrain him, even if the ship or vessel has to be sold. Still, further, the said merchants are not bound to pay him any freight, since he has not carried for them their goods which they freighted, and which have not remained behind through any fault on their part. Saving, however, that it should be understood, that if they, who have chartered the ship or vessel, have not fulfilled what they undertook to do when they chartered her, and through the fault or negligence of the merchants he has had to return without their goods, the said managing owner of the ship or vessel is not bound to return, on the contrary they are bound to pay him freight, since he will have to return without their goods through the fault of the said merchants. And if by chance there be not any fault of the said merchants, and the managing owner of the ship or vessel is willing to return, and if the mariners object that they do not wish to return, they cannot and ought not to do so for any reason, since it does not result from any fault on the part of the managing owner of the said ship or vessel, or on the part of the said merchants, but only through the accidents above mentioned. Saving, nevertheless, that if the ship or vessel has left on shore any apparel or any of her crew in that place, from which she has to weigh anchor for the reasons aforesaid, the managing owner of the ship or vessel is bound to provide apparel in the place of that which he has left on shore, and to provide mariners in the place of those who have remained behind. And if by chance the managing owner of the ship or vessel is not willing to do so, the said mariners are not bound to return, if they do not wish, nor can the managing owner of the ship or vessel constrain them on any grounds, since he does not wish to supply what has been above mentioned. And for this reason this chapter was made.

Capitol ccxli. De conserva.

Si senyor[1] de nau o leny fara o haura fet conservatge ab algu o ab alguns senyors de naus o lenys, sia que sien grans o pochs o major o menor o semblant a la sua nau o leny, to co que en la dita convinenca feta sera, per rao del dit conservatge, deu esser attes e complit, sia que la dita convinenca, feta per rao del dit conservatge, sia scrita o sia que fos feta per paraula. Empero sia axi entes que la dita convinenca, feta per rao del dit conservatge, sia e puga esser en ver mesa, co es a entendre, per testimonis, o per escrit que sia fet per ma de escriva jurat, o per albara fet ab voluntat de les parts, en lo qual albara deu haver any e dia e hora, e nomenat lo loch on lo dit albara sia stat fet; encara mes scrits en la fi del dit albara los segells de les parts, los quals lo dit conservatge faran o o empendran o hauran fet, si en loch ne seran. Empero, si les parts desusdites en lo loch, on seran com faran o empendran lo dit conservatge, e tot co que desus es dit no y poran fer, sino tan solament per peraules, si aquelles seran otorgades per totes les parts,

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[1] *Si senyor*] Esp. 124, chapter ccxlviii. commences here with the Rubric "Si algun senyor de nau o "de leyn fara o aura fet conser- "vatge."

Chapter ccxli. Of convoy.

If a managing owner of a ship or vessel makes or has made arrangement to sail in convoy[1] with another or with other managing owners of ships or vessels, whether they be large or small, or greater or less, or like his own ship or vessel, all that is in the said agreement on the subject of the said convoy, ought to be observed and completed, whether the said agreement made on the subject of the said convoy is in writing or has been made by parole. Nevertheless, it should be so understood that the said agreement, made on the subject of the said convoy, is and can be verified, that is to say, by witnesses or by a writing, which has been made by the hand of a sworn scribe, or by a policy[2] made with the consent of the parties, in which policy there ought to be inserted the year and the day and the hour and the place by name where the said policy was made; still, further, there ought to be written at the end of the said policy the seals of the parties who have made or undertaken the said agreement of convoy, if they be in the place. Nevertheless, if the above-mentioned parties in the place where they were, and where they made and undertook the said agreement of convoy, and all that is said above, could not do so in any other way than by parole, if all the parties who have made or undertaken this

[1] *convoy*] This term does not precisely correspond to the Catalan word "conservatge," as "convoy" in the present day signifies the protection given by a vessel of war which escorts merchant ships. "Conservatge" is rather the mutual protection afforded to one another by merchant vessels sailing in company, in technical language, by consort vessels. The mutual obligations of such vessels have been discussed in chapters xlviii. and xlix., and they are recognised in the Tavola de Amalfi, which has been recently discovered amongst the Foscarini MSS. in the Imperial Library at Vienna. The 38th Article runs thus: "Item, si aliquod "navigium contrahit societatem "cum alio navigio, vulgariter *con-* "*serva*, et aliquod ipsorum patitur "naufragium, vel captum a pirati- "bus; quod tunc, sicut lucrum "erat commune, ita esset damnum, "id quod deperditur dividi debet in "solidum pro libra."

[2] *policy*] The Italian version has "polizia," which the Editor has adopted, as the word "policy" has come into general use in the case of assurances.

qui lo dit conservatge faran o empendran, valen o deven haver valor tot en axi com si eren scrites per ma del scriva jurat, e meses en albara o en cartolari de nau o leny; ab que per testimonis pusquen esser les dites paraules empreses en veritat esser meses, si algun contrast hi esdevendra. E si per ventura alguna de les dites parts vendra contra les dites convinences o avinences o contra alguna d'aquelles per rao del dit conservatge fetes o empreses, sia que sien fetes per scrit o per paraules, sien tenguts de restituir tot dan e tot interes que la part, a qui seran trencades les dites convinences, ne sostendra: en axi empero que lo dit dan e interes sia o pusca esser en ver mes. Salvo empero en totes coses e per totes tot just impediment per lo qual la dita convinenca o convinences per rao del desusdit conservatge fetes o empreses no poran esser atteses ne complides; e sots aytal condicio, que lo dit impediment sia e puga esser en ver mes. E si lo dit impediment en veritat mes esser no pora, aquell o aquells, qui lo dit impediment diran haver hagut e en ver metre no l'poran, sien tenguts de fer tot co que desus es dit sens tot contrast a aquell o a aquells, los quals lo dit dan e interes hauran en culpa dels desusdits sostengut. E per les raons desusdites fon fet aquest capitol.

Capitol ccxlii. De nau comanada per personers a algu.

Si alguns[1] bons homens o alguns mercaders hauran feta part a algu en alguna nau o leny, e con la dita part o parts hauran fetes e fornides, los dits bons homens o mercaders comanaran o faran comanda a aquell a qui ells han fetes les dites parts, que en la dita nau o leny ell per ells navech; si aquell, a qui la dita nau sera stada comanada, hi haura part o no, ell es tengut de navegar e de guanyar ab la dita nau o leny en totes parts, on ell guanyar ne pora; salvo empero totavia tota convinenca o manament, que dels

[1] *Si alguns*] Esp. 124, chapter cclix. begins here with the Rubric "Si alguns bons homens o alcuns mercaders faran o auran feta part."

agreement of convoy agree upon the words, it is valid, and ought to be valid equally as if it had been written by the hand of a sworn scribe, or inserted in a policy, or in the register book of the ship or vessel, provided the said words of the undertaking can be verified by witnesses, if any dispute supervene. And if by chance any of the said parties shall act contrary to the said covenants and agreements, or any of them, made or undertaken on the subject of the said convoy, whether they have been made in writing or by parole, they are bound to make good all the loss and all the interest which the party to whom they have forfeited their promises shall have sustained thereby; provided, however, that the said loss and interest can be verified. Saving, however, in all things every just impediment through which the said covenant or covenants made and undertaken on the subject of the said convoy cannot be fulfilled and completed, and under the condition that the said impediment may and can be verified. And if the said impediment cannot be verified, he or they who shall say that they met with such an impediment, but cannot prove it, are bound to do all that is above stated without any dispute with him, or those who have sustained the said loss and interest by the fault of the above said. And for the reasons above stated this chapter was made.

Chapter cexlii. Of a ship committed by the part-owners to the charge of any person.

If any substantial persons, or any merchants have taken shares with anyone in any ship or vessel, and when the shares have been taken the said substantial persons or the merchants shall entrust the ship or vessel to him, with whom they have taken the said shares, that he should sail in the said ship or vessel on their account, if he to whom the said ship or vessel has been entrusted has a share in it or not, he is bound to navigate it and to make profit with the said ship or vessel in every port where he can make a profit; saving, however, in any case every covenant and direction which has been made on the part of the said substantial persons or merchants

dits bons homens o mercaders li sera stat fet lo dia, que ells la dita nau li comanaren, o despuys. E si lo dit, a qui la dita nau sera stada comanada, guanyara, ell es tengut de retre e de donar als dits bons homens o mercaders tot lo guany que la dita nau o leny haura fet, salvo lo dret que ell haver deu o haver ne devra per la part que ell hi haura. E si part alguna no li haura, ell se n'pot retenir tot co que a ell ne pertanyera, que n'dega haver per la sua persona tot en axi com pertany a senyor de nau o de leny. E si lo dit senyor o comandatari no l's portara guany, ans los portara consumament, los dits bons homens, qui la dita nau comanaren o li feren part e l'feren senyor del nau, deven pendre en compte lo dit consumament, si donchs provar no li poran, que l'dit consumament sia stat per sa culpa, es a entendre, que ell o hagues jugat o bagaceiat o emblat o mal procurat. E si aco provat li sera, lo dit senyor comandatari de la dita nau o leny es tengut de tot lo dit consumament a restituir sens tot contrast a coneguda e a voluntat dels dits bons homens, qui la dita nau li comanaren o li feren part. E si la dita culpa provada no li sera, e ell be e diligentment haura fet tot co que haura pogut, e en la culpa d'ell no sera romas que ell no haia portat guany a aquells, que la dita nau o leny li comanaren o li feren part, e lo contrari provat no li sera, tot li deu esser pres en compte. E si lo dit senyor o comendatari menara ab si scriva de creenca, si lo dit scriva haura jurat al comencament com rebe la dita

on the day when they entrusted to him the said ship, or subsequently. And if the said person to whom the said ship has been entrusted shall make any profit, he is bound to render and pay to the said substantial persons or merchants all the profit which the said ship or vessel has made, saving, always, the right which he ought to have or shall have to a part of it on account of the share which he has in the ship. And if he has no share in the ship, he may retain all that which shall appertain to him, inasmuch as he ought to have for his own personal services as much as belongs to the managing owner of a ship or vessel. And if the said managing owner or commissioner shall not bring back any profit, on the contrary shall bring back loss, the said substantial persons who have entrusted to him the said ship, or have taken shares in it, or have appointed him manager of the ship, ought to take into account that loss, unless they can prove that it has resulted from his fault, that is to say, that he has lost his money at play, or spent it in debauchery, or embezzled it, or badly managed it. And if this can be proved against the said commissioned managing owner of the said ship or vessel, he is bound to make good all the loss without any dispute, according to the decision and award of the said substantial persons who have entrusted to him as commissioner the said ship, or have taken shares in it. And if the said fault cannot be proved, and he has well and diligently performed all that he could, and it does not result from his fault that he has not brought back profit to those who entrusted to him the said ship or vessel, or took shares in it, and the contrary cannot be proved, the whole ought to be taken into account. And if the said managing owner or commissioned manager shall take with him [1] a clerk of trust, if the clerk has taken an oath at the commence-

[1] *take with him a clerk*] A clerk of his own choice is here understood. The appointment of the ship's clerk is discussed in chapter xii.

scrivania, sino los dits personers lo poden fer jurar e demanarli sots pena del sagrament, ja aquelles messions o consumaments, que ell los met en compte, si es axi com ell ha scrit e axi com los ho dona en compte. E si lo dit scriva dira sots pena del sagrament, que axi•es com ell ha scrit e axi com los ho met en compte, sobre aco lo dit scriva deu esser cregut, si donchs lo contrari provat no li sera. E si lo dit contrari provat li sera, lo dit scriva deu haver la pena, que ja es posada en un capitol, e lo dit senyor o comendatari de la nau o leny es tengut de restituir lo dit consumament als dits bons homens, qui la dita nau o leny li comanaren, si lo dit scriva no ha de que pusca restituir, sia que sia fet lo dit consumament per culpa del dit scriva o per culpa del dit senyor o comendatari, per co com lo dit senyor haura levat aytal scriva, com desus es dit. E si lo dit contrari al dit scriva provat no sera, lo dit scriva no deu sostenir la pena desusdita, ne encara lo dit senyor no es tenguts de res a restituir als dits personers del dit consumament, si trobat hi sera, pus en culpa d'ells no sera esdevengut. E si per ventura al dit senyor li fallira l'escriva, o no haura menat scriva jurat, e lo dit senyor scrivra o fara

ment when he accepted the said office of clerk, otherwise the said part-owners may make him swear and interrogate him under the penalty of an oath, that those expenses or losses which he has entered in the account are such as he has written, and such as he has stated in the account. And if the said scribe shall say under the penalty of the oath which he has taken that it is as he has written and as he has entered in the account, thereupon the scribe ought to be believed, unless the contrary can be proved. And if the said contrary can be proved, the said scribe ought to have the punishment [1] which has been already laid down in a preceding chapter, and the said managing owner or commissioned master of the ship or vessel is bound to make good the said loss to the said substantial persons who have entrusted to him the said ship or vessel, if the said scribe has not wherewithal to make it good, whether it happen that the said loss has arisen from the fault of the said scribe or by the fault of the said managing owner or commissioned manager, because the said managing owner has chosen the said scribe as aforesaid. And if the said contrary cannot be proved against the said scribe, the said scribe ought not to suffer the punishment aforesaid; and further, the said managing owner is not bound to make good anything to the said part-owners of the said loss, if any be found, since it has not arisen from his fault. And if by chance the said managing owner shall be without a clerk,[2] or shall not have carried with him a sworn clerk, and the said managing owner shall enter or

[1] *punishment*] Chapter xii. enjoins as a punishment the loss of the clerk's hand, a branding on the forehead, and the confiscation of the clerk's property.

[2] *without a scribe*] Although it was imperative on Catalan vessels under Art. ii. of the Ordinance of King James I. of Aragon of 1258 to have a sworn clerk on board, and the rule received additional sanction from Art. i, of the Ordinance of King Peter of Aragon of 1340, it might well happen that the managing owner could not procure a sworn clerk, or that he might be without a clerk from accidental circumstances.

scrivre algunes messions, que ell haura fetes, si los dits personers, qui la dita nau o leny li hauran comanada, lo tendran en suspita, ells ne poden haver un sagrament, que ell que l's diga si son veres aquelles messions, e que sia axi com ell ha scrit o fet scrivre, e axi com ell met en compte. E si ell diu hoc sots pena del sagrament, ell deu esser cregut, si donchs lo contrari no li sera provat, e si provat li es, deu restituir tot lo dit consumament, que trobat hi sera, a coneguda e a voluntat dels desusdits. E si lo dit contrari provat no li pora esser, ell deu esser cregut, e lo dit compte li deu esser rebut, sia que port guany o perdua, pus en culpa d'ell no sera romas. E es rao, que axi com los dits personers hagueren fianca en ell, com li feren part en la dita nau o leny, rao es que la y hagen en lo retro del compte, sia que port guany o perdua, si donchs lo contrari no li poran provar, com desus es dit. E axi sia que haia menat scriva jurat o no, no li nou ne li deu noure per les raons desusdites. Empero totavia que senyor de nau mene o puga menar scriva jurat ab si, es gran descarrech e gran aleviament, per que tot senyor de nau o leny lo deu de menar, que fer ho puga. E per les raons desusdites fon fet aquest capitol.

Capitol ccxliii. Si nau de mercaderia se encontrara ab nau de enemichs.

Si alguna[1] nau o leny de mercaderias se encontrara ab alguna altra nau o leny de enemichs, si en la nau o leny desusdit de la mercaderia haura mercader o mercaders, lo dit senyor de la nau o del leny los deu demanar, ja ells si volran o volen que ells aferren e combaten e prenguen aquella nau o leny de enemichs. E si lo dit mercader o mercaders lo y atorgan, tots o la major partida, lo dit senyor de la nau ho pot ben

[1] *Si alguna*] Esp. 124, chapter ccl. commences here with the Rubric "Si alguna nau o leyn de mercaderia s'encontrara ab altra nau." The words "d'anemichs" are added in black ink.

cause to be entered in writing any expenses which he has incurred, if the said part-owners, who have entrusted to him the said ship or vessel, shall hold him in suspicion, they may require him to make oath that he will declare if the expenses are true, and that they have occurred as he has written or caused to be written, and as he has entered them in the account. And if he says this under the penalty of an oath, he ought to be believed, unless the contrary has been proved, and if the contrary is proved, he ought to make good all the said loss, which shall be ascertained, according to the award and decision of the aforesaid. And if the contrary cannot be proved, he ought to be believed, and the said account ought to be received, whether it brings gain or loss, since it has not resulted from his fault. And it is reasonable, that according as the said part-owners had confidence in him, when they took shares with him in the said ship or vessel, they should have confidence in the return of the account, whether it bring gain or loss, unless the contrary can be proved as above said, and accordingly whether he carries with him a sworn scribe or not, it does not prejudice him, nor ought it to prejudice him, for the reasons above said. Nevertheless, on all occasions when the managing owner of a ship carries with him or can carry with him a sworn clerk, it is a great discharge and relief, wherefore, every managing owner of a ship or vessel, who can carry one, ought to do so. And for the reasons above stated this chapter was made.

Chapter ccxliii. If a ship of merchandise meets with a ship of an enemy.

If any ship or vessel of merchandise shall meet with any other ship or vessel of an enemy, if in the ship or vessel of merchandise aforesaid there shall be a merchant or merchants, the managing owner of the ship or vessel is bound to demand of them, whether they should wish or are willing that he should attack and combat and capture that ship or vessel of the enemy. And if the said merchant or merchants assent to it, all or the greater part, the said managing owner of the ship may

fer, que per dan ne per destrich, que los dits mercaders ne sostenguen, lo dit senyor de la nau o leny no l's es tengut de alguna esmena a fer, ne de res a restituir del susdit dan, si los mercaders lo n'sostendran, pusque ells lo y atorgaren e ab lur voluntat sera stat fet. Mas empero, si lo dit senyor de la nau o leny fara aco, que desus es dit, sens sabuda e sens voluntat dels dits mercaders, de tots o de la major partida, si los dits mercaders ne sostendran o n'hauran a sostenir dan o greuge algu, lo dit senyor de la nau o leny los es tengut de tot lo dit dan o greuge, que los dits mercaders ne sostendran o n'esperan a sostenir, a restituir sens tot contrast, si la nau o leny ne sabia esser venut, o l's bens del dit senyor de la nau o leny, si trobats li seran en algunes parts; perco com lo dit senyor de la nau haura fet e comencat co que desus es dit, sens sabuda e voluntat dels dits mercaders, de tots o de la major partida. E si per ventura lo dit senyor de la nau haura aco fet o comencat ab voluntat de l's dits mercaders o de la major partida, per rao del dit guany que faran o entendran o n'esperan a fer, lo dit senyor de la nau o leny es mester que l's ho attena sens tot contrast. E si per ventura entre lo dit senyor de la nau o leny e los dits mercaders, de tots o de la major partida, empressio ne convinenca alguna entre ells feta no haura per rao del guany que ells faran o speran a fer, e aquell guany aytal, per aytal rao com desus es dita, sera stat fet o s'fara, deu esser partit en aquesta manera; que lo dit senyor de la nau o leny ne deu haber e pendre lo terc, e los dits mercaders ab la lur roba ensemps ne deven pendre

well do so, for if the said merchants should suffer any loss or detriment thereby, the managing owner of the ship or vessel is not bound to make them any compensation, nor to make good any of the said loss, if the merchants should sustain any, since they assented and it was done with their good will. But, nevertheless, if the said managing owner of the ship or vessel shall do this, which has been stated above, without the knowledge and without the consent of the said merchants, all or the greater part, if the said merchants shall sustain or have to sustain any loss or prejudice, the said managing owner of the ship or vessel is bound to make good, without any dispute, all the said loss or prejudice which the said merchants have sustained or expect to sustain, even if the ship or vessel has to be sold or the effects of the said managing owner of the said ship or vessel, if they shall be found anywhere; because the said managing owner of the ship has done and commenced what has been above explained, without the knowledge and consent of the said merchants, all or the greater part. And if by chance the said managing owner of the ship has done and commenced it with the consent of the said merchants, or of the greater part, by reason of the said gain which they shall make or are given to understand that they will make or expect to make, it is incumbent on the said managing of the ship that he should keep his promise without any dispute. And if by chance there has been no undertaking nor agreement between the said managing owner of the ship or vessel and the said merchants, all or the greater part, on the subject of the gain which they shall make or expect to make, and such gain has been made or will be made in the manner as above stated, it ought to be shared in this manner; the said managing owner of the ship or vessel ought to have and take a third and the said merchants together with their goods ought to take another third, and the sailing master and the

l'altre terc, e lo notxer[1] e los panesos e mariners e tots aquells qui son tenguts e prenen loguer de nau l'altre terc. Empero deu esser levat e pres dels dits tres tercos co, de que deven esser honrats e millorats aquells, qui de la nau o leny son tenguts, e lo dit millorament deu esser donat a coneguda dels dits mercaders e del scriva de la nau o del notxer e del un dels panesos e de dos proers. Empero es en axi a entendre, que segons que l'guany sera gran o poch s'y deu esser partit; empero, sia lo dit guany gran o poch, totavia ne deu haver lo cors de la nau o leny ab lo dit senyor ensemps lo terc, e lo remanent del dit guany deu esser partit per testes a coneguda dels desusdits. E si lo senyor de la nau o leny fara o comencara co que desus es dit sens sabuda o voluntat dels mercaders o de la major partida, se dan algu no n'sostendran los dits mercaders, lo dit senyor de la nau o leny no l's es tengut de donar lo terc, mas es los tengut de donar co que li sera semblant a coneguda del notxer e del scriva e de dos proers, e aquests deven partir co, que le dit senyor devra dar als dits mercaders, segons la roba e segons la valor e la bondat que quascun dels dits mercaders haura en si. Que assats es semblant a rao, que prou ne hagen d'aco, que lo dit senyor de la nau o leny los dara als dits mercaders a coneguda dels desusdits, perco car lo dit senyor de la nau o leny era tengut e fora obligat als dits mercaders de tot dan a restituir que ells ne sostenguessen e n'esperrassen a sostener, si los dits mercaders pres lo haguessen. E si per ventura en la dita nau o leny mercader algu no haura, si lo dit senyor de la nau

[1] *e lo notxer*] Espagnol 124 has the reading "e l's notxer, e l's per- "soners e tots sells, que son ten- "guts ni prenen loguer de la dita "nau o leyn, l'altre ters."

officers of the poop and mariners and all those who are engaged to and take wages from the ship the remaining third. Nevertheless, there ought to be deducted and taken from the said three third parts that with which those who are engaged to the ship ought to be gratified and recompensed, and the said recompense ought to be given by the award of the said merchants or of the ship's clerk, and of the mate and one of the officers of the poop and two of the forecastle-men. Nevertheless, it is to be understood, that according as the gain shall be great or small, under any circumstances the hull of the ship or vessel, together with the managing owner, ought to have a third, and the residue of the gain ought to be divided by heads according to the award of the persons aforesaid. And if the managing owner or vessel shall do and commence as above said without the knowledge and consent of the merchants or of the greater part, if the said merchants shall not sustain any loss, the said managing owner of the ship or vessel is not bound to give them a third, but he is only bound to give them that which shall seem fit according to the award of the mate and of the ship's clerk and of two of the forecastle men, and they ought to allot that which the said managing owner ought to give to the said merchants according to their goods and according to the value and quality of that portion which belongs to each of the said merchants. For it is sufficiently in accordance with reason that they should have the price of that which the managing owner of the ship or vessel shall give to the said merchants by the award of the aforesaid persons, inasmuch as the said managing owner of the ship or vessel was bound and would have been obliged to make good to the said merchants all the loss which they might have sustained or might have to expect to sustain, if the said merchants had in fact sustained any loss. And if by chance there should be no merchant in the said ship or vessel, if the said managing owner of the

volra comencar a fer co que desus es dit, ell no u deu fer ne pot, que no n'ha poder de fer. E de aventurar en aco no cal altre dir, que si lo dit senyor de la nau o leny ho aventurara, si be li n'pren, sera bontat e valor sua, si regoneix los dits mercaders qui la dita roba o mercaderia hauran en la sua nau o leny, d'alguna cosa. Empero sera en sa voluntat si ho fara o no. Mas empero, si lo contrari s'y esdevendra, en aco que lo dit senyor de la nau haura aventurat e comencat, lo dit senyor de la nau o leny e encara los bens d'ell han e hauran star a rao als dits mercaders, si algun dan hi pendran o n'sostendran o n'esperaran a sostenir segons que desus es dit, perco com a la dita nau no eran los dits mercaders. Encara per altra rao, perco car lo senyor de la nau o leny en aytal cas, com desus es dit, no ha poder menys de sabuda dels dits mercaders, ne es rao que n'dega haver; que assats ha poder tot senyor de nau o leny, presque ha poder en la roba dels mercaders en fet de git o de naufraig, si donchs los dits mercaders ne son presents en la nau, si cas de git o de naufraig s'y esdevendra. Empero, si lo dit senyor de la nau o leny pora mostrar o en ver metre co que desus es dit, que per cas de ventura li sera esdevengut, lo cas de ventura es aytal, que lo dit senyor de la nau o leny no y pogues fugir, es axi a entendre que la dita nau o leny de enemichs li vengues desus e que s'afferras ab ell; e si par la rao desusdita los mercaders dan algu sostendran, lo dit senyor de la nau o leny no l's es tengut de alguna esmena a fer, pus lo dit dany en culpa d'ell no sera

ship wishes to commence and do what has been above stated, he cannot and ought not to do it, for he has not power to do it. And if he risks doing it, there is nothing else to be said, but that if the said managing owner of the ship or vessel has risked doing so, if he captures any thing, it will be an act of bounty and generosity on his part if he rewards the said merchants, who have their said goods or merchandise on board his said ship or vessel with any thing. It will, however, be entirely at his option whether he does so or not. But, nevertheless, if the contrary should result when the said managing owner of the ship shall have risked and commenced, the said managing owner of the ship or vessel and likewise his effects are and shall be responsible to the said merchants, if they suffer or sustain or expect to sustain any loss according to what has been said above, inasmuch as the said merchants were not on board the said ship. Further, for another reason, because the managing owner of the ship or vessel in such a case as is above stated, has no power without the knowledge of the said merchants, nor is it reasonable that he should have; for every managing owner of a ship or vessel has sufficient power, inasmuch as he has power over the goods of merchants in case of jetison or of shipwreck, if the said merchants are not present on board of the ship when a case of jetison or shipwreck supervenes. Nevertheless, if the said managing owner of the ship or vessel can show or verify that what is above stated has supervened by misfortune, that the circumstances of the misfortune were such that the managing owner of the ship or vessel could not possibly escape by flight, that is to say, that the said ship or vessel of the enemy pursued him and ranged alongside of him, and from the abovesaid cause the merchants have sustained any loss, the said managing owner of the ship or vessel is not bound to make them any compensation, inasmuch as the said loss has not resulted from any fault on his part, whether

esdevengut, sia que los dits mercaders sien en la nau o no; e per altra rao, que a cas de ventura no pot hom res dir. E perco fon fet aquest capitol per les raons desusdites.

Capitol ccxliv. De convinenca feta per comendatari de nau.

Si algu[1] comanara o haura comanada sa nau o son leny a algun altre, se aquell, a qui la dita comanda sera feta de la nau o leny, fara ab algu o ab alguns alguna convinenca o promissio, per raon de algun fet qui pertanga a la dita nau o leny; si aquell, a qui la dita nau o leny sera stat comanat e la dita convinenca o promissio haura feta, si ell no attendra co que convengut e promes haura a algu o a alguns; si aquell, a qui la dita convinenca o promissio feta sera stada, ne sostendran dan algu, aquell, qui la dita nau o leny li haura comanat, los es tengut di tot lo dit dan e greuge a restituir, si la dita nau o leny ne sabia esser venut, ab que per culpa d'aquell, a qui ell haura la dita nau o leny comanat, los sia esdevengut lo dit dan o greuge; en axi empero que la dita convinenca o promissio sia estada feta per rao de fet qui pertanga o pertanyer dega a la nau o leny. Empero si aquell, qui la dita nau o leny haura comanada, ne sostendra o n'haura a sostenir algun dan en culpa d'aquell, a qui ell haura comanat la dita nau o leny, si aquell ha alguns bens, ell li es tengut de tot aquell dan o greuge a restituir, que per culpa d'ell haura sostengut. E si aquell, a qui la dita nau o leny sera stat comanat, no ha de que pagar, e es aconseguit, e lo dan desusdit pagar ne restituir no pora, ell deu esser mes en poder

[1] *Si algu*] Esp. 124, chapter ccli. here commences with the Rubric "Si algun comenara o aura comenada sa nau a altra."

the said merchants were on board his vessel or not, and for another reason that no one can say anything against what is an accident. And for the reasons above said this chapter was made.

Chapter ccxliv. Of a contract made by the commissioned master of a ship.

If anyone shall commit, or has committed, his ship or his vessel[1] to the charge of any other person, if he, to whom the said charge of the ship or vessel has been committed, shall make with any person or persons any contract or engagement in regard to any matter which pertains to the ship or vessel, if he to whose charge the said ship or vessel shall have been committed, and who has made the said contract and engagement, does not fulfil that which he has agreed to and promised to any person or persons, and if he to whom the said engagement and promise has been made shall thereby sustain any loss, he who has committed the said ship or vessel to his charge is bound to make good to him or them all the said loss or mischief, even if the said ship or vessel has to be sold, in case that the said loss or mischief has resulted from the fault of him, to whom he has committed the said ship or vessel; provided, however, that the said agreement and promise has been made in regard to a matter which appertained to or ought to appertain to that ship or vessel. If, however, the person who has committed the said ship or vessel shall thereby sustain any loss by fault of him to whose charge he has committed the said ship or vessel, the latter, if he has any effects, is liable to make good all that loss or mischief, which the former may have sustained through his fault. And if he, to whose charge the said ship or vessel has been committed, has not wherewithal to pay, and is sued, and cannot pay nor make good the above said loss, he ought to be placed in the custody of the local authorities,

[1] *his vessel*] This chapter completes what has been said in chapter clxv. on the subject of commissions in relation to ships or vessels.

de la senyoria e star tant temps en aquell loch, tro que ell haia satisfet e pagat tot lo dit dan, o que se n'sia avengut ab aquell, qui lo dit dan haura sostengut per culpa d'ell, e aco desusdit sia fet menys de tot frau. Empero si aquell, a qui algu haura comanada la sua nau o leny, fara alguna convinenca o promissio ab alguns, e en culpa d'ell no romandra que ell no la attena, ell ni aquell, qui la dita nau o leny li haura comanada, no son tenguts de alguna esmena a fer a aquells a qui la dita promissio sera stada feta, pus per culpa d'ell no romandra ne sera romas, que ell no la l's haia attesa. Perque quascu s'guart a qui comanara son veixell e com e com no, perco que dan algu no li n'puixa esdevenir, ne n'hagues a sostenir per alguna rao. E per les raons desusdites fon fet aquest capitol.

Capitol ccxlv. De nau presa e recobrada.

Nau[1] o leny qui sera stada presa per sos enemichs, si alguna nau altra de amichs s'encontrara ab los dits enemichs, qui la dita nau o leny pres hauran, si la dita nau o leny, qui ab los dits enemichs s'encontrara, tolra o pora tolre per qualsevol rao la dita nau o leny als dits enemichs, qui, axi com desus est dit, presa la hauran; la dita nau o leny e tot quant en ella sera deu esser salvo a aquell o aquells, de qui sera e esser deu, si algu viu ne haura, aquell empero donant a aquells, qui als dits enemichs tolta la auran, trobadures convinents segons lo maltret que hagut ne hauran, e segons lo dan que n'hauran sofert. Empero sia e deu esser axi entes, que si los dits amichs la hauran tolta als dits enemichs

[1] *Nau*] Esp. 124, chapter cclii. commences here with the Rubric "Nau o leyn qui sera stat pres per sos anamichs." The words "e pus los levar" are added in black ink.

and remain for so long a time in that place, until he has satisfied and paid all the said loss, or until he has made an arrangement with him, who has sustained the said loss through his fault, and this has been effected free from all fraud. Nevertheless, if he, to whom any one has intrusted his ship or vessel, shall make any covenant or engagement with any one, and it shall not result from any fault on his part that he does not fulfil it, neither he nor the person who has intrusted to him the said ship or vessel, are liable to make any compensation to him to whom the said promise shall have been made, since it will not result nor has it resulted from his fault, that he has not fulfilled it. Wherefore every one should beware to whom he shall entrust his vessel, and how so and how not, in order that no loss may accrue to him, and that he may not have to sustain loss on any account. And for the aforesaid reasons this chapter was made.

Chapter ccxlv. Of a ship captured and recaptured.

If a ship or vessel should be captured by an enemy, and any ship or vessel of a friend encounters the enemy, who has captured the said ship or vessel, if the said ship or vessel, which has encountered the said enemy, shall recapture,[1] or be able to recapture, by whatever means, the said ship or vessel from the enemy, the said ship or vessel, and all which shall be in her, ought to be recaptured for him or for those to whom they belong, or ought to belong, if any of them are alive, on condition, however, of their giving to those who recaptured her from the said enemy, suitable salvage reward, and according to the maltreatment which they may have undergone, and according to the loss which they may have incurred. Nevertheless it ought to be understood, that if the said friends have re-

[1] *recapture*] This chapter, as illustrating the law administered in British Courts of Admiralty, has been translated into English by Dr. Christopher Robinson in his Collectanea Maritima, London, 1801.

dins la senyoria e la mar, de on la dita nau o leny sera, o en loch on los dits enemichs no la haguessen rera si, aco es a entendre en loch salvo; ells ne deven haver segons que desus es dit. Empero si los dits amichs tolran o hauran tolta la dita nau o leny als dits enemichs en loch, on ells la tenguessen rera si, en loch salvo, no l's ne deven esser donades trobadures, si ells se volran, ans deu esser del tot lur sens tot contrast: que senyoria ne alguna altra persona no l's hi deu ni l's hi pot per alguna justa rao metre contrast. Encara mes, si alguns enemichs hauran tolta alguna nau o leny a algu o alguns, si per ventura veuran o hauran vista d'alguna nau o leny de que los dits enemichs haguessen dubte o paor, e per lo dit dubte o paor los dits enemichs lexaran e desempararan la dita nau o leny, que ells presa hauran axi com desus es dit; si la dita nau o leny, qui los dits enemichs hauran lo dit dubte o paor, pendran, o amarineran, o se n'menaran la dita nau o leny, que l's dits enemichs hauran desemparada per la dita paor; la dita nau o leny deu esser retuda a aquell de qui sera o deu esser, si ells vius seran, o als proismes de aquells sens tot contrast; ells empero donant a aquells, qui la dita nau o leny o la roba o mercaderia, que en la dita nau o leny sera, hauran presa, trobadures convinents segons que desus es dit, si entre ells avenir se n'poran. E si entre ells avenir no se n'poran, sia mes lo contrast desusdit en poder de bons homens. Mas empero, si algu o alguns desempararan lurs naus o lenys per dubte o per paor de sos enemichs, e alguna altra nau o leny encontrar s'a ab la dita nau o leny, que axi com desus es dit hauran desemparat, e amarinar e menar la han en loch salvo, es axi a entendre, que aquells qui la dita nau o

captured her from the said enemy within the jurisdiction and in the sea to which the said ship or vessel belonged, or in a place where the said enemies had not reduced her into possession, that is to say, brought her into a place of security, they ought only to have such reward as above said. If however the said friends have recaptured the said ship or vessel from the enemy in a place where they have reduced her into possession, as being in a place of security, they ought not to have salvage remuneration, if they wish it, on the contrary, the ship or vessel ought to be entirely their own without any dispute, for neither the local authorities nor any other person can or ought to dispute it on any just grounds. Still more, if any enemies have captured any ship or vessel from any person or persons, if by chance the enemies see or have sight of any ship or vessel respecting which the said enemies have doubts or fear, and if the said enemies leave behind and abandon the said ship or vessel which they have taken as above said; if the said ship or vessel, respecting which the enemies have doubts or fear, shall seize or take in tow or carry off the said ship or vessel, which the enemies have abandoned from the said fear; the said ship or vessel ought to be restored to them to whom she belongs or ought to belong, if they are alive, or to their next of kin, without any dispute, on condition, however, of their giving to those who have taken the said ship or vessel or the goods or merchandise, which shall be on board of the said ship or vessel, suitable salvage remuneration, according to what has been said above, if they can agree about it. And if they cannot agree among themselves, let the abovesaid dispute be submitted to Prudhommes. But nevertheless, if any person or persons have abandoned their ship or vessel from doubt or fear of their enemies, and any other ship or vessel has met with the said ship or vessel, which has been abandoned in the manner aforesaid, and has taken her in tow and brought into a place of security, that is to say,

leny hauran amenat, e no la haien tolta enemichs, e enemichs no la han haguda en si, ne rera si, es axi a entendre, que los dits enemichs no la haguessen tolta a aquells de qui es e qui deu esser; aquella nau o leny e la mercaderia que dins es, no deu esser d'aquell o d'aquells, qui axi com desus es dit la hauran trobada, mas segons us de mar poden ne demanar trobadures convinents. E si per ventura entre ells avenir no se n'poden, sia e deu esser mes lo contrast desusdit en poder de bons homens, perco car totavia es bona la cominalesa e la egualtat e l'temprament de bons homens: e es rao que algu no deu fer ne encercar tant de dan a altre, com per ventura fer poria; perco, car negu no sab ne pot saber ne es cert, aon es lo seu dan ni lo seu perill; perque quascu devria posar tot contrast que haia ab algu en coneguda de bons homens, e majorment sobre los casos damuntdits o semblants d'aquells, perco que Deu ne gens lo l's puguen reprendre per alguna rao. Empero, es axi a entendre, que tot co, que desus es dit, que sia e deu esser fet menys de tot frau; perco car a les vegades tal cuyda enganar e fer dan a altre, qui l'fa a si meteix, perco, com null hom ne sab ne es cert que li ha esdevenir a si meteix, ni als seus, ne que no; perque negu no deu anar a dan ni a engan ni a perdicio d'altre per alguna rao, perco com no sab on s'es lo seu. Empero, si algu sabia que alguna nau o leny devia anar o sera anat en algun loch, on haura dubte o paor de sos enemichs, e aquell o aquells desusdits armaran lur nau o leny per fer dan a la dita nau

if those, who have brought in the said ship, have not recaptured her from enemies, and enemies have not had her in their hands nor reduced her into possession, that is to say, the said enemies have not captured her from those to whom she belonged or ought to belong, that ship or vessel, and the merchandise which is within her, ought not to belong to him or them who have found her as above said, but they may claim suitable salvage remuneration according to the usage of the sea.[1] And if by chance they cannot agree amongst themselves, the dispute ought to be submitted to the judgment of Prudhommes, for in all matters the mediation and the equity and the arbitration of Prudhommes is a good thing; and it is reasonable that no one should do or inflict upon another all the loss which by chance he may be able to do or inflict upon him, for no one knows nor can know nor is certain, when his own loss and his own peril may come on; wherefore every person ought to refer every dispute which he has with another to the award of Prudhommes, and more especially upon the cases above said or cases similar to them, in order that neither God nor any one may blame them with any reason. Nevertheless it is to be understood that all that, which is above said, must be done free from all fraud; inasmuch as some times a certain person thinks to deceive or do harm to another and he does it to himself instead, for no one knows nor is certain what will happen to himself or to his relations, or what not; wherefore no one ought to work harm or deceit or perdition against another on any grounds, for he knows not when his own turn will come. Nevertheless, if any person knows that any ship or vessel ought to go or has gone to any place, where there is doubt or fear of enemies, and the person or persons aforesaid have armed their ship or vessel to do harm to the said

[1] *the usage of the sea*] It would thus appear that salvage on recapture was at this time recognised as a right founded on long usage.

o leny o als altres, perco que pugan guanyar les dites trobadures, o perco que hagen o puguen haver la dita nau o leny o la roba que en ella sera o l'altra per rao alguna; si aquell o aquells, qui axi[1] com desus es dit hauran armat, e provat los sera que ells hagen o haguessen armat per les raons e condicions desusdites; aquell o aquells aytals no deven haver les dites trobadures ni la dita nau o leny del tot ni en partida, ne la roba que en la dita nau sera; si be aquells, de qui es o deu esser, la habien abandonada, o encara que l's enemichs la l's haguessen tolta, si donchs los dits qui armat hauran en ver no poran metre, que ells no havien armat per les raons e condicions desusdites. Empero, si provat los sera, que ells haguessen armat per fer dan a algu o a algus o a tot hom, ab qui ells s'encontrassen, en forma o manera de enemichs o axi com enemichs fan, per qualsevol rao o manera qu'ells alguna nau o leny menaran, sia que la menen ab roba o menys de roba, o sia que la hagen tolta a enemichs o trobada axi com desus es dit, no n'deven haver alguna cosa: ans deu esser salvada a aquell o aquells de qui es, o de qui deu esser. E aquells qui axi com desus es dit hauran armat, deven esser presos e mesos en poder de la senyoria, e deu esser fet d'ells axi com de robadors, si co que desus es dit provat los sera. Empero si provat no l's sera, que ells haguessen armat per les raons desusdites, si ells alguna nau o leny hauran tolta a enemichs o la hauran atrobada segons que desus es dit, deu los esser donat e salvat tot lur dret, que ells haver ne deven o haver ne devran per alguna de les raons desusdites. Empero, si dubte sera, que ells haguessen armat per les raons desusdites, si per ventura sera cas, que los desusdits hagen a reprovar les raons

[1] *qui axi*] Qui is redundant here.

ship or vessel, or to others, in order that they may gain the said salvage remuneration, or in order that they may have the said ship or vessel, or the goods which shall be on board of her or of the other on any grounds, if the person or persons have armed as aforesaid, and it shall be proved that they have so armed their ship or vessel for the reasons and motives aforesaid; that person or persons ought not to have the said salvage remuneration nor the said ship or vessel in whole or in part, nor the goods which are on board of her, even if those, to whom she belonged or ought to belong, have abandoned her, or further, if the enemies have captured her, unless the said persons, who have armed their ship or vessel, shall verify that they have not armed her for the reasons and motives aforesaid. Nevertheless, if it can be proved that they have armed to do harm to any person or persons, or to every person, whom they should meet, in the form and manner of enemies, or as enemies do, for whatever reason or in whatever manner they shall bring in any ship or vessel, whether they bring her in with goods or without goods, or whether they have recaptured her from enemies, or found her as above said, they ought not to have anything; on the contrary, all ought to be salved for the person or persons to whom it belongs, or to whom it ought to belong. And those persons who have armed their ship in the manner above stated ought to be seized and placed in the custody of the local authorities, and it ought to be done to them as to robbers, if what has been said above can be proved. Nevertheless, if it cannot be proved that they have armed for the reasons above said, if they have recaptured any ship or vessel from enemies, or have found it as above said, all their rights which they ought to have, or ought to have had, on any of the grounds above mentioned ought to be maintained. Nevertheless, if there be doubt that they have armed from the motives above mentioned, if by chance there shall be a case which requires them to disprove the motives above

sobre ells dites e posades; los dits ne algu qui ab ells fos, ne encara alguna persona que dan o prou ne esperas haver en les raons e condicions sobre ells dites e posades, no puga a ells fer testimoni a lur prou per neguna rao, ne encara alguna persona que fos avariciosa o que hom hagues dubte que s'giras per diners. Empero si per ventura, com los dits enemichs hauran presa alguna nau o leny o alguna altra roba, si los dits enemichs la dita nau o leny o roba, que presa hauran, jaquiran o hauran jaquida per lur voluntat e no pur paor que haguessen ne hagen haguda de alguna nau o leny, de que ells haguessen haguda vista, ne haguessen dubte ne paor que desus los pogues venir; si algu o alguns la dita nau o leny o roba que los dits enemichs hauran jaquida, axi com desus es dit, atrobaran o hauran atrobada en loch salvo e la metran o la menaran, no deu esser lur de tot, si senyor trobat li sera; mas deven los esser donades trobadures convinents a coneguda dels bons homens del loch, on la dita nau o leny o la dita roba sera stada amenada sots les raons e condicions desusdites. Empero si a la dita nau o leny o roba dins temps convinent senyor exit o vengut no y sera, los dits, qui la dita nau o leny o la dita roba atrobada hauran, deven haver per lurs trobadures la meytat d'aco que valra; e de la altra meytat deu esser fet segons que demostra e declara en lo capitol, qui parla de roba que sera trobada. E si per ventura los dits enemichs se n'menaran alguna nau o leny, o si n'portaran alguna roba, e los dits enemichs no lexaran la dita nau o leny o roba per lur voluntat, ans la hauran a leixar per temporal o

said and laid down, neither the said persons nor any one who was with them, nor any other person who expected to have any loss or gain in the reasons and conditions stated and laid down respecting them, can be allowed to bear witness in their favour on any grounds, nor any person who is avaricious of money and about whom one may have a doubt that he would change sides for money. Nevertheless, if by chance, when the said enemies have captured any ship or vessel or any other goods, if the said enemies leave or have left the said ship or vessel or goods, which they have taken, of their own will, and not from fear which they might have or have had of any ship or vessel of which they have had a view, and have had a doubt or fear that it might attack them; if any person or persons discover or have discovered in a safe place the said ship or vessel or goods which the said enemies have left as above said, and they take possession of it and bring it away, the whole shall not belong to them, if the managing owner can be found; but there ought to be paid to them suitable salvage remuneration by the award of the Prudhommes of the place, where the said ship or vessel or the said goods shall have been brought in, for the reasons and conditions aforesaid. Nevertheless, if for the said ship or vessel or goods no owner shall have stepped forward or arrived within a suitable time, the said persons who shall have discovered the said ship or vessel or goods, ought to have for their discovery a moiety of their value; and with the other moiety there ought to be done what has been declared and set forth in the chapter[1] which speaks of goods which have been found derelict. And if by chance the said enemies have carried away any ship or vessel or carried off any goods, and the said enemies have not left the said ship or vessel or goods of their own will, on the contrary have had to abandon it by reason of a tem-

[1] *the chapter*] Chapter ccvii. is here referred to.

per algunes naus o lenys, de que hauran dubte o paor, de aquella nau o leny o roba, que l's dits enemichs, axi com desus es dit, hauran haguda a leixar, deu esser fet axi com d'aquella, que l's enemichs hauran jaquida anar per lur autoritat e en aquella metexa forma, e tot aco deu esser fet menys d'algun frau. E si per ventura los dits enemichs vendran o staran en algun loch,[1] en lo qual ells rembran alguna nau o leny o alguna roba, que ells hauran presa, si aquell o aquells, de qui la dita nau o leny o roba stada sera, volran cobrar dita nau o leny o roba, aquell o aquells, qui remuda la hauran, son tenguts de retre la a aquell o aquells de qui stada sera, ells empero donant e retent la dita remco e encara donant a ells guany, si ells pendre n'volran. E si per ventura, com los dits enemichs hauran presa alguna nau o leny o roba, ells ne faran o n'hauran feta donacio a algu, aquella donacio no val ne deu haver valor per alguna rao. Empero, si los dits enemichs la donaran o retran a aquell, de qui stada sera, tot comunament sens alguna remco, aquella donacio aytal val e deu haver valor; e en aquella donacio aytal no ha, ne pot haver algun contrast. Mas si per ventura los dits enemichs diran al dit senyor de la nau o leny a qui faran la gracia, axi; " Nos te retem la tua nau o leny franca de tot remco, " mas volem haver remco de la roba que en la dita " nau es"; aquesta donacio no val, perco com los dits enemichs no la han en loch salvo, que puguen dir e esser certs, que, abans que la haguessen en loch salvo, no la poguessen haver perduda per alguna rao, jat sia que hagen poder de cremarla o metre a fons si ells se volran; empero, nau o leny o roba, pus es cremada o

[1] *algun loch*] a neutral port is here evidently contemplated.

pest, or of certain ships or vessels of which they had doubts or fear, there should be done with that ship or vessel or goods, which the said enemies as aforesaid have had to abandon, precisely as in the case of that which the enemy has allowed to go away of their own authority, and in the very same form, and all this ought to be done without any fraud. And if by chance the said enemies shall come or stay in any place in which they release on ransom any ship or vessel or any goods, which they have captured, if the person or persons, to whom the said ship or vessel or goods shall have belonged, wishes to recover the said ship or vessel or goods, the person or persons who have ransomed them, are bound to restore them to the person or persons to whom they belonged, in the condition always that they pay and return to them the said ransom money, and further paying them a profit, if they wish to have it. And if by chance when the said enemies have captured any ship or vessel or goods, they make or have made a donation of them to any one, that donation is not valid nor ought it to be valid on any grounds. Nevertheless, if the said enemies shall give and restore them to the person, to whom they belong, all in common without any ransom, such a donation is valid and ought to have validity, and there can be no dispute in the matter of such a donation. But if by chance the said enemies shall say to the said managing owner of the ship or vessel, to whom they do the favour, in these words; "We restore you your ship or vessel free of all "ransom, but we wish to have a ransom for the goods "which are in the said ship;" this donation is not valid, because the said enemies have not taken her into a place of security, so that they might be able to say and be certain that they would not have lost her by any means before they could bring her into a place of security; although they had power to burn her or sink her to the bottom, if they chose to do so; nevertheless the ship or vessel or goods, when they are burnt or spoilt, are good

guastada, no es bona a nengu, ne algu no n'pot fer de son prou, ne amichs, ne enemichs, que axi be es perduda als uns com als altres. E sia entes aco, que desus es dit, de nau o leny axi be de la dita roba o mercaderia, com de la nau o leny. E si per ventura la roba, que en la dita nau o leny sera, rembran los mercaders o los amichs d'aquells dels enemichs, lo senyor de la nau o los amichs d'aquell son tenguts de metre en la dita remco per sou e per livra o per besant, de tot aytant com la dita nau o leny valra, e aco deu esser fet sens tot altre contrast; e sia e deu esser tot aco antes, que desus es dit, axi be de la nau o leny com de la mercaderia, e de la mercaderia com de la nau o leny desusdit. Empero, si los dits enemichs tendran o hauran tenguda la dita nau o leny o roba en loch salvo,[1] co es a entendre que la hagen treta de la mar de sos enemichs, es a entendre que ells puxen haver recobre de sos amichs; si com los dits enemichs tendran o hauran en si o rera si la dita nau o leny o roba, que a sos enemichs hauran tolta, axi com desus es dit, donaran o faran donacio o venda a algu de la dita nau o leny o roba, val e deu haver valor sens tot contrast, que senyoria ne altra persona no y pot metre constrast. Si donchs aquell, a qui la dita donacio hauran feta, no volra fer alguna gracia a aquells, de qui la dita nau o leny stada sera, ell ho pot fer si fer ho volra, que en altra manera senyoria ne alguna altra persona no l'ne pot forcar ni destrenyer per alguna justa rao, si donchs aquell, de qui la dita nau o leny o roba stada sera, frau algu per alguna justa rao mostrar no hi pora. E si lo dit frau en ver mes esser pora, la dita donacio no deu valer ni deu haver neguna valor per alguna rao, ans pot e poria esser en tal manera o condicio lo dit frau, que aquell

[1] *en loch salvo*] Infra præsidia, infra locum tutum, was the ancient Law of Europe.

for nobody, and no one can make a profit of them, neither friends nor enemies, for they are lost as well to the one as to the other. And it should be understood, as has been above said of the ship or vessel, in like manner of the goods or merchandise as of the ship or vessel. And if by chance the merchants or their friends shall ransom from the enemy the goods which shall be in the said ship or vessel, the managing owner of the ship and his friends are bound to contribute to the said ransom by shillings and pounds or by besants for as much as the said ship or vessel shall be worth, and this ought to be done without any dispute; and all this ought to be understood as above said as well of the ship or vessel as of the merchandise, and of the merchandise as of the ship or vessel aforesaid. Nevertheless, if the said enemies shall conduct or have conducted the said ship or vessel or goods into a place of security, that is to say, if they have carried her away out of the enemy's waters, where she might have been recaptured by her friends; if, when the said enemies hold and have reduced into possession the said ship or vessel or goods, which they have captured from the enemy as above said, they shall give or make a donation or a sale to any person of the said ship or vessel or goods, it is valid and ought to have validity without any dispute, for neither the local authorities nor any other person has power to dispute it. If, however, the person, to whom the said donation has been made, shall wish to do a favour to them, to whom the said ship or vessel shall have belonged, he may do such favour, if he wishes it, for neither the local authorities nor any other person has power to force or compel him on any grounds of justice, unless indeed the person, to whom the said ship or vessel or goods have belonged, can prove fraud on any just grounds. And if the said fraud can be verified, the said donation ought not to be valid, nor to have any validity for any reasons, on the contrary the said fraud may be of such kind and condition, that the person to whom the donation has been made ought to be

a qui la donacio sera stada feta, deu esser pres per la senyoria, e deu li esser donada pena en haver e en persona, segons la condicio e lo cas que en lo dit frau trobat sera, sens tota merce; e la dita nau o leny o roba, si lo dit frau trobat sera, sens tota merce deu esser retuda a aquell o aquells, de qui stada sera, sens tot contrast. E si per ventura los dits enemichs faran o hauran feta venda a algu o alguns de alguna nau o leny o roba, que ells presa hauran, la dita venda val e deu haver valor en aquesta manera, que aquells qui la dita nau o leny o roba hauran comprada, pusquen mostrar que la dita venda los sia stada feta dels dits enemichs en loch salvo,[1] co es que la tenguessen rera si. E si per ventura aquells diran haver comprada aquella roba per just cas o per justes raons, e mostrar ne en ver metre no u poran la venda, que diran a ells esser feta, no deu haver valor; ans si en la dita roba o en la dita nau o leny demanador o senyor algu exira, qui en ver metre puga la dita nau o leny esser sua, deu li esser retuda en aquesta manera, que lo dit contrast sia mes en poder de bons homens o de la senyoria, alla on sia fet, e que sia sens tot frau. E si lo dit frau provat hi sera, la part contra la qual lo dit frau provat sera, sia e deu esser tenguda a restituir a la part, la qual lo dit frau sostengut haura, totes messions e dans e interesos; encara la part, qui en lo dit frau consentira, deu esser mesa en poder de la senyoria. Empero, si lo dit senyor de la nau o hom per ell cobrara la dita nau o leny o roba, per qualsevol rao que s'cobre, ells son tenguts de reconeixer a tots aquells, qui part li hauran, la part que ells la donchs hi havien, com los dits enemichs la l's tolgueren, aquells empero donant a ell tot co que la lur part costat haura, per sou e per

[1] *loch salvo*] The intervention of a Prize Court was not required to give the purchaser a valid title.

seized by the local authorities, and ought to suffer some penalty both in his goods and in his person according to the condition or the case of the said fraud, when proved, without any mercy, and the said ship or vessel or goods, if the said fraud be proved, ought to be restored without any mercy to the person or persons, to whom it belongs, without any dispute. And if by chance the said enemies shall make or have made a sale to any person or persons of any ship or vessel or goods, which they have taken, the said sale is valid and ought to have validity in this manner, that the person, who has bought the said ship or vessel or goods, must be able to show that the said sale was made to him by the said enemies in a place of security, that is that they had reduced their prize into possession. And if by chance they shall say that they have bought the said goods on just grounds and for just reasons, and cannot prove nor verify the fact, the sale, which they shall say was made to them, ought not to have any validity; on the contrary, if any claimant or any owner of the said ship or vessel or goods shall step forward, who can verify that the said ship or vessel is his property, it ought to be restored to him in this manner, namely, that the said dispute shall be submitted to the decision of Prudhommes or of the local authorities, whether a sale has been made or not, and whether it was made without fraud. And if the said fraud shall be proved, the party, against whom the said fraud shall be proved, ought to be bound to restore to the other party, who has suffered by the fraud, all the expenses and losses and interest; further, the party, who has committed the fraud, ought to be placed in the custody of the local authorities. Nevertheless, if the said managing owner of the ship or his agent shall recover the said ship or vessel or goods, by whatever means he shall recover it, he is bound to restore to all those, who had shares in it, the share which they had in it when the said enemies captured it, on condition however of their giving to him all that which their share has cost,

livra, segons que a quascun pertanyera. Mas empero, si lo dit senyor de la nau o leny cobrara alguna roba e fara algun pati o alguna convinenca, perco que ell puga cobrar la dita nau o leny o roba, ab voluntat de tots los personers o de la major partida, lo dit senyor de la nau los pot forcar e destrenyer ab senyoria, si ell si volra; que axi li son tenguts e obligats, com si li habien promes de fer part en nau o leny, que ell volgues de fer de nou, o que la compras novellament. Empero, si lo dit senyor de la nau avinenca o pati algu fara menys de tots los personers e de la major partida, no li n'son tenguts de res, si ells no s'volran, ne lo dit senyor de la nau o leny a ells respondre ne regoneixer de les parts o drets que ells hi havien, com los dits enemichs la li tolgueren; salvo de compte, si entre lo dit senyor de la nau o leny o roba e ells dits personers ne havia romas, per rao de les dites parts que ells havien en la dita nau o leny o roba, com los dits enemichs la li tolgueren. Empero, si ells volran cobrar les dites parts e lo dit senyor algun contrast los hi metra o l's volra metre, senyoria lo n'pot e l'ne deu destrenyer, que per alguna justa rao lo dit senyor de la nau o leny o roba no se n'pot ne deu escusar ne defendre, pus los dits personers pagaran o pagar volran tot co que a ells ne partanyera o partanyer ne devra, per sou e per livra, segons les dites lurs parts seran. Car no seria rao ne egualtat, que algu dega o haia poder de desposseir alguns de lur per alguna rao, ells empero faent lo que fer devran en lo car desusdit. Empero deu esser axi entes, que, si lo senyor de la

by shillings and pounds, according as it appertains to each. But nevertheless, if the said managing owner of the ship or vessel shall recover any goods, or make any compact or any agreement in order that he may recover the said ship or vessel or goods, with the assent of all the part-owners, or of the greater part, the said managing owner of the ship may force and constrain them with the local authorities, if he chooses; for they are bound and obliged to him, just as if they had promised to take part in a ship or vessel which he wished to build anew or which he had newly bought. Nevertheless, if the said managing owner of the ship shall make any compact or agreement without the assent of all the part-owners, or of the greater part, they are not liable for anything, if they do not wish, nor is the said managing owner of the ship or vessel bound to answer to them nor to restore to them the shares or rights which they had, when the said enemies captured it, saving the account, if it has not been given in between the said managing owner of the said ship or vessel or goods and the said part-owners with respect to the shares, which they had in the said ship or vessel or the said goods, when the said enemies captured it from him. Nevertheless, if they wish to recover the said shares, and the said managing owner raises or wishes to raise any dispute with them, the local authorities may and ought to constrain him, for the said managing owner of the ship or vessel cannot and ought not on any just grounds to excuse himself nor to refuse, provided the said part-owners have paid or are willing to pay all that which appertains to them or ought to appertain to them, by shillings and by pounds, according as their said shares shall be. For it would not be reason nor equity that any one ought to or should have the power to dispossess any one of his property on any grounds, provided indeed that the latter does what he ought to do in the case above said. Nevertheless, it ought to be so understood, that, if the

nau o leny o roba comprara o rembra, o hom per ell, la nau o leny o roba, que ja era o fo sua, dels dits enemichs o d'altres, qui dels dits enemichs la haguessen haguda per justa rao, si aquells, qui part hi havien, no volran pagar segons que desus es dit, lo dit senyor qui comprada la haura, o hom per ell, se deu fadigar, o haver fadiga, en los dits personers una o moltes vegades, e si los dits personers pagar no volran, ell la deu donar al corredor, si ell se volra, ab consentiment de la senyoria, e qui mes hi dara, aquell la deu haver. E si per ventura de les parts, que l's dits personers havien en la dita nau o leny o roba sua, serat trobat mes que costat no haura de la dita venda o remco, aquell mes deu esser donat e retret a quascu dels dits personers segons que li n'pertanyera. En axi empero sia e deu esser entes, si lo dit senyor per gracia fer ho volra, que en altra manera no l's n'es tengut, si ell no s'volra. E lo dit senyor de la nau o leny o roba o aquell qui per ell la haura comprada o remuda, ne deu haver avantatge, que la s'puga retenir per aytant com altre donar hi volra o y dara, si lo dit senyor a corredor donar la volra. E si per ventura no trobara hom tant de la dita nau o leny o roba, com de compra o de remco costat haura, si lo dit senyor o hom per ell sens voluntat e consentiment dels dits personers la compra o la reme, los dits personers no li son tenguts del dit menys-cap si ell n'y fara, si donchs ells per alguna gracia fer no u volran, e axi es rao que lo dit senyor o aquell qui per ell la haura comprada o remuda, ne haia e n'dega haver avantatge de retenirla per aytant

managing owner of the ship or vessel or goods or his agent shall buy or ransom the ship or vessel or goods, which formerly were and have been his own, from the said enemies, or from others who have had them from the said enemies, for just reasons, if those who had shares in them are not willing to pay according to what has been said above, the said managing owner who has bought them, or his agent, ought to apply to the said part-owners one or more times, and if the said part-owners do not wish to pay, he ought to place them in the hands of the public auctioneer, if he chooses, with the consent of the local authorities, and he who will give most for them, he ought to have them. And if by chance of the shares, which the said part-owners had in the said ship or vessel or in their goods, there shall result from the said sale or ransom more than they cost, that surplus ought to be given and restored to each of the said part-owners according as it shall appertain to each. It is, however, to be understood in this manner, that the managing owner of the ship is willing to do this as a matter of favour, for in any other manner he is not bound to do so, if he does not choose. And the said managing owner of the ship or vessel or goods, or the person who has bought it or ransomed it for him, ought to have an advantage, that he may keep it for as much as any one else will give for it, if the said managing owner is willing to give it to the public auctioneer. And if by chance there shall not result from the sale of the said ship or vessel or goods so much as it has cost to purchase her or to ransom her, if the said managing owner or his agent has purchased or ransomed her without the consent and good will of the part-owners, the said part-owners are not liable for the said deficiency, if it exists, unless they wish to do so as an act of grace, and accordingly it is reasonable that the said managing owner, or the person who has bought or ransomed it for him, should have the advantage of retaining it for as

com altre dar hi volra, tot en axi com ha avantatge del consumament, que es e deu esser seu. Salvo empero que si alguns de aquells qui part hi havien retenirla s'volran, ells son tenguts de pagar part al dit menyscap, segons que a ells ne pertanyera per alguna rao. E totes les raons, qui desus son dites, e tots los casos e condicions desusdites sien enteses a bon enteniment, que l's dits enemichs la haguessen tenguda en loch salvo, exceptada la dita remco o compra, si menys de frau sera stada feta.

Capitol cexlvi. De carrech de lenyam.

Si alguna[1] nau o leny carregara o haura carregat en algun loch de lenyam per portar en algun altre loch, si entre lo senyor de la nau o leny e los mercaders, de qui lo lenyam sera, preu algu de nolit entre ells no haura de dit lenyam, lo dit senyor de la nau o leny pot pendre la meytat del dit lenyam, si ell se volra, per rao de son nolit, que mercader ne alguna altre persona, ne encara senyoria no lo y pot vedar per alguna rao, perco car axi es e fo establit e ordenat, e es la costuma del comencament que l's antichs comencaren anar per lo mon e establiren e ordenaren axi com damunt es dit, e axi deu esser seguit com antiguament fo ordenat e no en altra manera per alguna rao. Salvo empero en aytal manera, que si los dits mercaders de qui lo dit lenyam sera, diran o hauran dit al dit senyor de la nau o leny ans que lo dit lenyam carregassen, que ells volien fer preu del nolit per rao del dit lenyam, e si lo dit senyor de la nau

[1] *Si alguna*] Esp. 124, chapter ecliii. commences here with the Rubric "Si alguna nau o lney carregara o aura carregat en algun loch." The words "de lenyam" are added in black ink.

much as any other person will give for it, precisely as he has the advantage of the waste, which is and ought to be his own. Saving, nevertheless, that if any of those who have a share wishes to retain it, he is bound to pay his share of the said deficiency according to what appertains to him on any grounds. And all the reasons aforesaid, and all the cases and conditions aforesaid, are to be understood on the supposition that the said enemies have carried their capture into a place of safety; excepting the said ransom and purchase, if they have been made without fraud.

Chapter ccxlvi. Of a cargo of timber.

If any ship or vessel shall load or have laden in any place timber to carry to another place, if between the managing owner of the ship or vessel and the merchants to whom the timber belongs no price has been settled for the freight of the said timber, the said managing owner of the ship or vessel may take the half[1] of the said timber, if he wishes, in consideration of his freight, which neither the merchant nor any other person nor even the local authorities can forbid on any grounds, because it is and has been established and ordained, and it is the custom from the beginning[2] when our ancestors began voyaging about the world, and they established and ordained as above said, and so it ought to be followed as was ordained of ancient time, and in no other manner on any grounds. Saving, however, in such manner, that if the said merchants, to whom the said timber shall belong, shall say or have said to the said managing owner of the ship or vessel before they put the timber on board, that they wished to settle the price of the freight on account of such timber, and if the said managing owner of the ship or vessel shall say or has

[1] *the half*] A similar rule is laid down in chapt. ccxxix. with regard to a cargo of empty casks.

[2] *the custom from the beginning*] A law maritime is here appealed to, the operation of which no local tribunal was entitled to restrict.

o leny dira o haura dit als dits mercaders, que no l's cal fer preu de nolit per rao del dit lenyam, que ell ne fara tot co que ells ne volran e tenguen per be; e si los dits mercaders carregaran sobre les paraules e condicions desusdites, que l'dit senyor de la nau los haura dites, los dits mercaders ne son tenguts de donar la meytat del lenyam, pus que ells sobre les paraules e condicions desusdites carregaran; ne lo dit senyor de la nau no l's ne pot ne deu gens demanar, per les condicions damuntdites, qui seran stades empreses. Empero, los dits mercaders son tenguts de donar nolit convinent al dit senyor de la nau o leny del dit lenyam, segons que nolit se daran en aquell loch, on ells seran, o segons que ab lo dit senyor avenir se poran. E si per ventura los dits mercaders ab lo dit senyor de la nau o leny avenir no s'poran del dit nolit, deu esser mes en poder de bons homens, e aco que ells ne diran, allo n'deu esser seguit, e als no. Salvo empero es axi a entendre, que los dits mercaders puguen o puguessen en ver metre les dites paraules e condicions damuntdites, que ab lo dit senyor de la nau foren empreses, per escrit o per testimonis. E si en ver metre no u poran, lo dits mercaders son tenguts de donar la meytat del lenyam per rao de son nolit.

Capitol ccxlvii. De convinenca.

Si alguna[1] convinenca sera stada entre alguns per qualsevol rao, ab que la dita convinenca sia stada feta a bo e sa enteniment, deu esser observada e tenguda entre aquells, entre los quals sera stada feta en loch convinent. E si la dita convinenca sera stada feta en loch convinent e ab justa rao e a bon enteniment, deu esser observada e tenguda entre aquells entre los quals feta sera. E si per ventura algu de aquells, entre los quals la dita convinenca sera stada feta, no atten-

[1] *Si alguna*] Esp. 124, chapter ccliv. commences here with the Rubric "Si alguna convinensa sera stada feta per alguns per qualsevol raho."

said to the said merchants that he does not know how to fix a price for the freight of the said timber, that he will do all that they wish and think right; and if the said merchants have loaded on the faith of the words and conditions aforesaid, which the said managing owner of the ship has spoken, the said merchants are not bound to pay the moiety of the timber, since they have put it on board on the faith of the words and conditions aforesaid, nor can the managing owner of the ship demand, nor ought he to demand it of them, by reason of the conditions aforesaid, which have been agreed upon between them. Nevertheless, the said merchants are bound to pay a suitable freight to the said managing owner of the ship or vessel for the said timber, according to what is paid for freight in that place, where they shall be, or according to what they may agree to with the said managing owner. And if by chance the said merchants cannot agree with the said managing owner of the ship or vessel concerning the said freight, it ought to be submitted to the decision of Prudhommes, and that which they shall say ought to be altogether followed, and no otherwise. Saving always, it is to be understood, that the said merchants may always verify the said words and conditions above said, which have been agreed to with the said managing owner, by writings or by witnesses. And if they cannot verify them, the said merchants are bound to give the moiety of the timber in consideration of freight.

Chapter ccxlvii. Of conventions.

If any convention has been made between any persons upon any subject, provided the said convention has been made with a good and sound intention, it ought to be observed and kept between those persons, between whom it has been made in a suitable place.[1] And if by chance any of those persons, between whom the said convention has been made, shall not observe the said convention, and

[1] *in a suitable place*] What places are not suitable, is explained in chapt. ccviii.

dra la dita convinenca, e aquell o aquells als quals la dita convinenca observada o attesa no sera, ne sostendra algun dan o algun greuge, aquell, qui la dita convinenca observada no ha, es tengut de tot a restituir sens tot contrast. Salvo empero que a aquell, qui la convinenca no haura tenguda ne observada, no u hagues tolt o vedat algun just impediment; lo qual si en ver mes esser pora, aquell, al qual lo dit just impediment esdevengut sera per lo qual ell haura haguda a rompre e trencar la dita convinenca, no sia tengut de esmena a fer a aquells, als quals ell hag la dita convinenca a rompre o trencar per rao del dit impediment. E si per ventura ell lo dit impediment en ver metre no pora, ell sera tengut de restituir segons que desus es dit. Mas empero, si aquell haura haguda a rompre e no haura attesa la dita convinenca a aquell o aquells, als quals ell feta la haura, per culpa e per negligencia dels desusdits, si ell la dita culpa o negligencia en ver metre pora, si ell per la dita negligencia algun dan o greuge sostengut n'haura, aquell o aquells, contra los quals la dita culpa o negligencia provada sera, son tenguts de tot a restituir sens tot contrast. E tot co que desus es dit deu esser fet menys de tot frau, e salvo empero tot just impediment a quascuna de les parts. E per aytal rao fon fet aquest capitol.

Capitol ccxlviii. De mercaderia encamerada o falsa.

Si algun[1] mercader vendra o haura venut a algun altre mercader alguna mercaderia en esta manera, que si lo dit mercader, qui la dita roba o mercaderia comprara, no la veura ne haura vista, o no la volre veure, ans se n'fiara en la fe del mercader qui la dita venda li fara o li haura feta, qui dira o fara entenent al dit mercader, a qui ell ven la sua roba o mercade-

[1] *Si algun*] Esp. 124, chapter ccxv. commences here with the Rubric "Si alcun mercader vendra o aura venut alguna roba o mercaderia."

the person or persons, towards whom the said convention has not been observed or kept, shall thereby sustain any loss or any prejudice, the person who has not observed the said convention, is bound to make good everything without any dispute. Saving, however, that no just impediment has prevented or forbidden him, who has not kept or observed the said convention; which impediment, however, if he can verify, the person to whom the said impediment has happened whereby he has had to break and disregard the said convention, is not bound to make any compensation to those, towards whom he has had to break and disregard the said convention by reason of the said impediment.[1] And if by chance he cannot verify the said impediment, he is bound to make good everything as afore stated. But nevertheless, if he has had to break and has not fulfilled the said convention to the person or persons, with whom he has made it, through the fault or negligence of the above-mentioned persons, if he can verify the said fault or negligence, and if he has sustained through the said negligence any loss or prejudice, the person or persons, against whom the said fault or negligence shall be proved, are bound to restore all without any dispute. And all which has been above stated ought to be done without any fraud, and saving always every just impediment, which may happen to any of the parties. And for this reason this chapter was made.

Chapter ccxlviii. Of merchandise adulterated or falsified.

If any merchant shall sell or has sold to any other merchant any merchandise in this manner, that if the said merchant, who has bought the said goods or merchandise, does not see it, nor has seen it, nor wishes to see it, on the contrary trusts to the good faith of the merchant who makes or has made the said sale, who has said or has made it understood to the said merchant,

[1] *impediment*] The operation of a just impediment to the fulfilment of a contract, such as death, force major, &c., has been discussed in chapters ccix., ccxv., and ccxix.

ria, que ell la li ven per bona e per fina; si lo dit mercader, qui la dita roba comprara o haura comprada, la haura rebuda sobre la condicio desusdita, si la dita roba o mercaderia no sera axi bona e fina, com aquell qui venuda la y haura li fahia entenent, ans sera trobada mala o encamerada en qualque loch on aquell, qui la dita roba o mercaderia comprada haura, la portara o la fara portar, si l'encamerament desusdit trobat sera, lo dit mercader qui la dita mercaderia haura venuda sots la condicio desusdita es tengut de retre e de donar a aquell mercader, qui la dita roba haura d'ell comprada, tot aytant com altre haver semblant d'aquell e de semblant natura d'aquell, que ell venut haura, valia en aquell loch on lo dit mercader la porta. E encara li es tengut, que si per rao de la falsia o del encamerament desusdit dan o greuges o messio haura sostengut algu, de tot a retre e a restituir sens tot contrast. Encara li es mes tengut, que si lo dit mercader, qui la dita roba haura comprada, pendra alguna falla, que ell no pora haver ne cobrar sos diners per rao de la falsia o del encamerament desusdit; lo dit mercader, qui la dita roba haura venuda sota la condicio desusdita, li es tengut de donar per sou e per livra, per rao de la falsia o encamerament desusdit, perco car ell no haura pogut cobrar los diners, tot aytant com ell dira per son sagrament que haguera guanyat, si los diners pogues haver cobrats, segons lo preu que ell haura venuda la dita roba, si la dita falsia o encamerament no y fos stat trobat; e tot aco desus dit, que sia e deu esser menys de tot frau. Empero, si aquell, qui la dita roba vendra o haura venuda, dira a aquell, qui la dita roba comprada haura, que ell la li ven per aytal com es, deient, "Veiats la o la fets veure, e si us altara, vos la

to whom he sells his goods or merchandise, that he sells it as of good and fine quality ; if the said merchant, who shall buy or has bought the said goods, has accepted them under the conditions aforesaid, if the said goods or merchandise shall not be so good and fine as those which he made him understand that he had sold to him, on the contrary they shall be found to be bad and adulterated in the place to which the person who has bought the goods shall have carried them or caused them to be carried, if the said adulteration shall be discovered, the said merchant, who has sold the said goods under the condition aforesaid, is bound to restore and to pay to that merchant, who has bought the said goods from him, all the value which other goods like those or of like nature to those, which he would have sold, would be worth in the place whither the said merchant has conveyed them. And further he is bound, if by reason of the falsification or adulteration aforesaid any person has sustained loss or prejudice or expense, to make good and restore it all without any dispute. Likewise he is further bound, if the said merchant, who has purchased the said goods, should suffer any deficit, so that he cannot have or recover his money by reason of the said falsification or adulteration, the said merchant, who has sold the said goods under the conditions aforesaid, is bound to pay by shillings and pounds by reason of the said falsification or adulteration, whereby the purchaser has not been able to recover his money, as much as he shall say upon oath that he would have gained, if he could have recovered his money according to the price at which he would have sold the said goods, if the said falsification or adulteration had not been discovered ; and all what is said above must be done without fraud. Nevertheless, if the person who shall sell or has sold the said goods shall say to him, who has purchased the said goods, that he sells them to him such as they are, saying " Look at them " or have them looked at, and if they suit you, take them.

" prenets, e si no, vos la leixats," si aquell qui la dita roba comprara, sia que la veia o la face veure o no, si ell la rebra,[1] sia que ell hi guany o y perda, en esta manera no li n'es tengut si no s'volra, pus que axi sia stada feta la dita venda com desus es dit, e en aytal condicio la haura comprada; empero que, si mester sera, les dites condicions en ver poguessen esser meses. E per les raons desusdites fo fet aquest capitol.

Capitol ccxlix. De bescompte allegat per personers contra los hereus del patro.

Si algun[2] senyor de nau o leny haura retut compte o l'escriva per ell a tots sos personers o a la major partida del guany que ell fet haura, o del consumament si esdevengut hi sera, o de qualque rao que lo dit senyor de la nau o leny sia o dega esser tengut de retre compte als dits personers, si los dits personers o la major partida rebran o oiran lo dit compte e se n'tendran per pagats; si lo dit senyor de la nau o leny vivra lonch temps o poch apres, e stant ab los dits personers ensemps en un loch o no, e navegara, e quascun viatge o alguns ell vendra en aquell loch, on seran los dits personers o alguns: o per ventura com lo dit compte haura retut o a cap de temps o encontinent lo dit senyor de la nau o leny ira en viatge, e

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[1] *si ell la rebra*] Esp. 124 exhibits a variation in the text, " si ell " la rebra la dita roba en si, si " aquell hi guanya o y pert, o sia " que lo encamerament desusdit hi " sia atrobat ha o no, pus que ell " aura racobrada la sua roba en si, " e sobre la condicio desusdita, " aquell qui la dita roba aura venuda " aura venuda (sic) axi com desus es " dit, e sots la condicio desusdita aura " la dita roba comprada e reebuda " en si, de dan que ell na sostenga " per naguna rao, si ell sa volra o " no's volra, en esta manera em- " pero, que, si mester sera, les ditas " condicions en ver poguessen esser " meses."

[2] *Si algun*] Esp. 124, chapter cclvi. here begins with the Rubric " Si alcun senyor de nau o de " leyn aura retut compta o l'scriva " per ell."

" and if they do not, leave them," if he who shall purchase the said goods, whether he looks at them or causes them to be looked at or not, accepts them,[1] whether he gains or loses by them, the seller is not liable to him for anything, unless he chooses, when the said sale has been made in the manner aforesaid, and the purchase has been made under such conditions; nevertheless, if need be, these conditions must be put in proof. And for the reasons aforesaid this chapter was made.

Chapter cexlix. Of error of account alleged by part-owners against the heirs of the managing owner.

If any managing owner of a ship or vessel, or the ship's clerk as his agent, has rendered an account to all the part-owners, or the greater part of them, of the gain which he has made, or of the loss, if any has supervened, or of anything respecting which the said managing owner of the ship or vessel is bound to give an account to the said part-owners, if the said part-owners, or the greater part, accept or hear the said account and regard themseves as paid; if the said managing owner of the ship or vessel live a long or a short time afterwards, and remain together with the said persons in the same place or not, and shall navigate his ship or vessel, and on each voyage or on some of them shall come to that place, where the said part-owners or some of them are; and by chance, when the said account has been accepted, at the end of some time, or immediately afterwards, the said managing owner of the ship or vessel shall go on a

[1] *accepts them*] The variation in the manuscript "Espagnol 124" is rather confused, but may be thus translated: "If he receives them "into his hands, whether he gains "by them or loses by them, or "whether the said adulteration be "found out or not, since he has "received the goods into his hands "and under the conditions afore-"said, he who has sold the said "goods as abovesaid, and has pur-"chased and received them into "his hands under the aforesaid "conditions [is not liable] for any "loss, unless he pleases, in this "manner however, that if need "be, the said conditions can be "verified on his part." In other words the seller must establish good faith on his part, by proving that he has purchased the goods under the same conditions.

per voluntat de Deu anant al viatge ell morra, e com la dita nau o leny sera vengut del dit viatge, on lo dit senyor sera mort, los dits personers, tots o partida, diran que ells trobaran o han trobat algun bescompte o falla en lo compte, que ell retut lo havia, e los dits personers, tots o partida, faran o faran fer demanda del dit bescompte o falla als bens del dit defunt o a sos hereus o a aquells qui tendran los bens d'aquell; si lo dit defunt haura fet testament, despuys que l'dit compte hag retut als dits personers, si en lo dit testament sera trobat, que l'dit mort haia reconegut lo dit bescompte o falla, o haura reconegut algun tort que ell tengues als dits personers, lo dit bescompte o tort deu esser restituit als dits personers sens tot contrast, si tots los bens del dit defunt ne sabien esser venuts, en axi que hereu ne alguna altre persona no y pot en res contrastar, salvant los mariners, si de lurs loguers no seran estat pagats. E si per ventura lo dit defunt haura fet testament segons que desus es dit, e no haura reconegut lo bescompte, los dits hereus no son de-res tenguts als dits personers de esmena a fer, salvant en aytant que si en lo cartolari on lo dit defunt rete compte, com viu era, als dits personers, sera trobat lo dit bescompte o falla, e qu'en lo dit cartolari sia aquell per aquell e no altre, e encara l'escriva, qui lo dit cartolari escrivi, que sia present, si viu sera, per veure e per disputar lo dit bescompte o falla, si sera ver o no, e algun altre escrit no sia ne deu esser cregut. Salvant en esta guisa, que si lo dit cartolari on lo dit defunt rete compte, com viu era, als dits personers no sera trobat; si los personers poran mostrar translat del dit cartolari, que sia translat del dit cartolari o no d'altre, e que l'haia

voyage, and by the will of God whilst going on the voyage shall die, and as soon as the said ship or vessel shall come off the said voyage, in which the said managing owner has died, the said part-owners, all or part, make or cause to be made a claim of error in the said account, or of deficit against the goods of the said deceased, or against his heirs, or against those who have possession of his effects; if the said deceased has made a testament since the said account was rendered to the said part-owners, and if it should be found that in the said testament the said deceased had recognised the said error of account or deficit, or has recognised any wrong which he has done to the said part-owners, the said error of account or the said wrong ought to be redressed to the said part-owners without any dispute, even if all the effects of the said deceased have to be sold, so that neither his heir nor any person else may in any way contest it, saving the mariners, if they have not been paid their wages. And if by chance the said deceased has made a testament according to what has been above stated, and has not recognised the error of account, the said heirs are not bound in any way to make compensation to the said part-owners, except in case that in the register book in which the said deceased, whilst alive, entered his account with the said part-owners, the said error of account or deficit shall be found, and the said register book shall be the identical register book and no other, and likewise the ship's clerk who made the entries in the said register book shall be present, if he be alive, to see and to discuss the said error of account or deficit, if it be true or not, and no other writing ought to be believed. Saving, however, that if the register book in which the said deceased, when alive, entered his account with the said part-owners, shall not be found, if the said part-owners can show a copy of the said register book, which is a copy of that very register book and of no other, and which the ship's clerk has copied from

trasladat aquell scriva per aquell e no altre, si viu era o viu sera, si los dits personers aco que desus es dit en ver metre poran, e si en lo dit translat lo dit bescompte o falla atrobat sera, los bens del dit defunt e los hereus de aquell son tenguts d'aytant com los dits bens bastaran de restituir al dits personers per rao del dit bescompte o falla, si trobada hi sera. E si per ventura lo dit defunt no haura fet testament despuys que lo dit compte rete, si lo dit cartolari o translat trobat sera, axi com desus es dit, si lo dit bescompte trobat hi sera, deu esser restituit axi com desus es dit. E si no ha fet testament, ne cartolari no s'troba, ha y gran treball e gran contrast. Empero lo contrast deu esser mes en poder de homens qui tengan cura de animes, e deu esser encercat si lo dit defunt haura confessor en aquell loch, ab qui ell se confessas o s'fos confessat; e si trobat hi sera, deu esser mes en poder del confessor lo dit contrast. E si per ventura confessor trobat no y sera, lo contrast deu esser mes en poder de homens qui temen Deu e anima e qui sien de religio,[1] e que sien homens honests e de bona fama.[2] E com los desus dits bons homens hauran rebut lo dit contrast en lur poder, ells deven haver tots los dits personers e deven haver de quascu d'ells un sagrament que diguen veritat del dit bescompte o falla, ja com es e com no, e com es esdevengut lo dit bescompte o falla; e los dits bons homens deven guardar la fama e la valor dels dits personers. Empero los dits bons homens no deven pas creure los dits personers, ans los

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[1] *de religio*] Esp. 124 has "homens de religio."

[2] *bona fama*] Esp. 124 has after "bona fama" the additional words "e que no sien homens balduffers."

that register book and from no other, if he was alive or shall be alive, if the said part-owners can verify what is above stated, and if the said error of account or deficit shall be found in the said copy, the effects of the deceased and his heirs are bound, as far as the said effects will suffice, to indemnify the said part-owners for the said error of account or deficit, if it shall be discovered. And if by chance the said deceased shall not have made a testament since he rendered the said account, if the said register book or copy shall be found, as above said, if the said error of account shall be discovered, it ought to be made good as aforesaid. And if he has not made a testament, and no register book shall be found, there will be great trouble and great dispute. The dispute, however, ought to be referred to the decision of certain persons who have the cure of souls, and it ought to be enquired if the deceased had a confessor in that place, with whom he confessed himself or had himself confessed, and if he shall be found, the said dispute ought to be submitted to the decision of the confessor. And if by chance a confessor cannot be found, the dispute ought to be submitted to the decision of men who fear God and the soul, and who are under vows of religion and are honest men and of good reputation. And when the said honest men [1] have under taken to settle the dispute, they ought to have before them all the part-owners, and they ought to have an oath from each of them that they will speak the truth respecting the said error of account or deficit, in what it does consist or not, and how the said error of account or deficit has happened, and the said honest men ought to have regard to the character and the quality of the said part-owners. Nevertheless, the said honest men ought not to believe the said part-owners [alone], on the contrary the said part-owners ought to produce

[1] *honest men*] Here the phrase "los dits bons homens" is explained by what precedes.

dits personers deven donar testimonis sobre lo dit contrast, que sien sens tota suspita, e que no speren haver dan ne prou del dit contrast; perco car segons tota rao algun hom no pot ne deu fer testimoni en algun fet de on sper dan o prou haver per alguna rao, si donchs les parts no s'y accordaran. E qualsevol cosa que los dits bons homens diran o pronunciaran sobre lo contrast desusdit, allo n'deu esser seguit e als no. E perco fon fet aquest capitol.

Capitol ccl. De nau que alleviara de exarcia apres que haura carregat.

Si algun[1] senyor de nau o leny hauran carregat en algun loch de roba de mercaders, si lo senyor de la dita nau o leny, aqui en aquell loch meteix on haura carregat o en altre loch, alleviara o haura alleviat per qualsevol rao, e com lo dit senyor alleviara o fara alleviar aquella dita nau o leny, ne traura o fera traure veles o ancores o alguna altre exarcia ans que la dita nau o leny sia descarregada,[2] e a la dita nau o leny vendra o sostendra algun dan o perdua o consumament, si al dit senyor provat sera, que per culpa d'ell o de la exarcia que treta n'haura, sera esdevengut lo dit dan, lo dit senyor es tengut de tot esmenar e restituir sens tot contrast. E si al dit senyor trobats no seran alguns bens, ne haura de que puga esmenar e restituir lo dit dany als dits mercaders, si es aconseguit, ell deu esser pres e mes en poder de la senyoria, axi com a comandatari; car tot senyor de nau o leny es e deu esser dit e rebut per mercader e per comandatari[3] en tots los negocis, que ell haura a fer ab mercaders per rao de sa nau o leny, e aco per moltes raons lesquals no cal ara dir. E per aco fon fet aquest capitol.

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[1] *Si algun*] Esp. 124, chapter cclviii. here begins with the Rubric "Si algun senyor de nau o de leyn "carregara o aura carregat en "algun loch."

[2] *sia descarregada*] Esp. 124 reads "del tot sia descarregada."

[3] *per mercader e per comandatari*] This reading of the editions of 1494 and 1502 is supported by Esp. 124. M. Pardessus has omitted "per "mercader e" as being words of no utility.

witnesses as to the said dispute, who are free from all suspicion, and who do not expect to have any loss or gain from the said dispute: because according to all reason no person can or ought to give testimony in any matter, from which he expects to derive loss or gain on any grounds, unless the parties agree to it. And whatever thing the said honest men shall say or pronounce respecting the said dispute, it ought all to be followed and nothing else. And for this reason this chapter was made.

Chapter ccl. Of a ship which is lightened of her apparel after she has taken on board cargo.

If any managing owner of a ship or vessel shall have laden her in any place with the goods of merchants, and if the managing owner of the said ship or vessel there in the very place, where he has laden the goods, or in another place shall lighten or cause to be lightened the said ship or vessel by stripping her or causing her to be stripped of her sails or anchors or any other apparel before the said ship or vessel has been unloaded, and if any damage or loss or waste shall accrue to or be sustained by the said ship or vessel, if it can be proved against the said managing owner that the said loss has happened through his fault or through want of the apparel of which she has been stripped, the said managing owner is bound to compensate and make good everything without any dispute. And if there shall not be found any effects of the said managing owner, and he shall not have wherewithal he can compensate and make good the said loss to the said merchants, if he is sued, he ought to be seized and committed to the custody of the local authorities, as if he were a commissioned master; for every managing owner of a ship or vessel is and ought to be called and reckoned as a merchant or a commissioned master in all matters, which he shall have to do for the merchants in respect of his ship and vessel, and this for many reasons, which it is idle to state. And for this reason this chapter was made.

Capitol ccli. Com deu pagar nolit en fet de get.

Com la opinio[1] de molts sia en diverses maneres del nolit, com deu pagar en fet de get e com no, opinio es d'alguns de tot lo nolit que l'senyor de la nau o leny reb de sos mercaders, que si la nau o leny haura gitat en aquell viatge, que per tot aquell nolit deu pagar lo senyor de la nau o leny en aquell get; item, es opinio d'altres, que si lo senyor de la nau o leny pren nolit axi de la roba gitada com de la salvada, que deu pagar en lo get tan solament per aquell nolit, que ell reb de la roba gitada; item, es opinio d'alguns altres, que si lo senyor de la nau o leny no pren nolit de la roba gitada, que ell no deu pagar d'aquell nolit, que rebut haura, en lo get. E quascu dels mercaders o altres persones, qui les dites opinions han en si, les pensen haver e dir ab bon enteniment, e en aquell los deu esser pres. E per co los antichs antecessors nostres, qui primerament anaren per lo mon en diversos lochs e partides, ells veent e entenent les opinions desusdites, hagueren de consell e acort en si meteixs, en quina manera ells porien tolre e remoure les dites opinions, e aco per tolre contrasts e treballs, e que no poguen esser ne esdevenir entre los senyors de les naus e lenys e los mercaders, ne encara ab altres persones qui ab ells haguessen a fer per alguna rao. Perco ells no planyent lurs treballs, no u gitaren a negligencia per haver ne merit de Deu, e amor e gracia de gents; e per tolre los contrasts e les opinions desusdites digueren e declararen o axi com en aquest capitol es scrit e ordenat. Que tot nolit, qui promes

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[1] *Com la opinio*] Esp. 124, chapter cclix. here begins with the Rubric "Capitol de nolit com deu "pagar en fet de git."

Chapter cc li. How freight ought to contribute in case of jetison.

As the opinions of many people are divers on the subject of freight, how it ought to contribute in a case of jetison [1] and how not, the opinion of some is, that for all the freight which the managing owner of the ship or vessel receives from the merchants, if the ship or vessel has made a jetison on that voyage, the managing owner of the ship or vessel should contribute to that jetison; the opinion of others is, that if the managing owner of the ship or vessel takes freight as well of the goods lost as of those that are saved, he ought to contribute to the jetison only for the freight, which he receives for the goods cast overboard; likewise the opinion of some others is, that if the managing owner of the ship or vessel does not take freight for the goods cast overboard, that he ought not to contribute to the jetison for his freight, which he has received. And each of the merchants or other persons, who have maintained these opinions, think that they have and maintain them with good reason, and this ought to be admitted on their part. And therefore our predecessors of olden time, who first voyaged about the world to divers places and parts, became aware of and understood the aforesaid opinions, and took counsel and accord amongst themselves, in what manner they could appease and reconcile these different opinions, and thereby reconcile all disputes and quarrels, so that none might arise between the managing owners of ships and vessels and the merchants, nor further with other persons who have to deal with them, on any grounds. Wherefore they have not grudged their trouble nor have they given themselves up to negligence, in order to have merit with God, and love and favour from men; and to remove all disputes and the differences of opinion above mentioned they have said and declared according as it is written and ordained in this chapter. That all freight, which has been promised

[1] *jetison*] The liability of the managing owner to contribute on account of his freight is discussed in chapter lii.

sera de donar per mercaders o per altres persones al senyor de la nau o leny, que li deu esser donat o pagat sens tot contrast, segons empero les convinences e empreniments, que seran fetes e empreses entre los mercaders e totes altres persones ab los senyors de les naus o lenys; e los senyors de les naus o lenys son tenguts de pagar en fet de get per tot aytant com los sobrara del nolit, que ells rebut hauran dels dits mercaders e encara de altres persones per lo dit viatge. Empero es axi a entendre, que los senyors de les naus o lenys deven abatre e levar dels dits nolits lo loguer dels mariners e la vianda e totes averies que fetes hauran per lo dit viatge, que justes sien. E de tot aco desusdit deven comptar los senyors de les naus o lenys, o home per ells, ab los mercaders o ab qui ells se volran, e si ho volran leixar en lur fe, aco sia en voluntat dels mercaders. E axi los senyors de les naus o lenys son tenguts de metre e de pagar en get per tot co, que net los sobrara del nolit, que ells rebut hauran dels dits mercaders per lo dit viatge, on lo dit get sera stat fet, per sou e per livra, axi com fara la roba salvada a la gitada. E si per ventura hi haura alguns dels mercaders o tots, qui diran que lo senyor de la nau o leny mete e paga en lo dit get per lo torn que ell haura, co es a saber, del nolit que l'dit senyor haura n'd'altres mercaders, o de aquells meteixos, o de altra roba, o de aquella meteixa, si ab ell se n'tornaran; los senyors de les naus o lenys no l's ne son tenguts per alguna rao, pus lo get sera ja comptat de altre viatge, e perco que la roba, que la nau o leny porta

to be paid by the merchants or by other persons to the managing owner of the ship or vessel, ought to be given and paid without any dispute, according however to the covenants and agreements which have been made and agreed upon between the merchants and all other persons with the managing owners of the ships or vessels: and the managing owners of the ships or vessels are bound to pay in a case of jetison for all the surplus that shall remain to them of that freight, which they have received from the said merchants and likewise from other persons for the said voyage. It is to be understood, however, that the managing owners of the ships or vessels ought to subtract and deduct from the said freight the wages of the mariners, and the food, and all the expenses which they have made for the said voyage, that may be just. And all this the managing owners of the ships or vessels or their agent ought to reckon with the merchants or with whom they wish to act for them, and if they wish to leave it to the good faith of the managing owners, this must rest with the pleasure of the merchants. And accordingly the managing owners of the ships or vessels are bound to contribute and pay in a case of jetison for all the net surplus which remains to them of the freight, which they have received from the said merchants for the voyage, in which the said jetison has been made, by shillings and by pounds, precisely as the goods saved contribute to the goods cast overboard. And if by chance there be any of the said merchants, or all of them, who shall say, that the managing owner of the ship or vessel should contribute and pay in the said jetison for the return which he shall have, that is to say, of freight from other merchants, or from the same merchants, or for other goods or for the same goods, if they should return with him; the managing owners of the ships or vessels are liable in no respect, since the jetison will have been already reckoned in the other voyage, and because the goods which the ship or vessel carries in her return voyage are not the

al retorn del viatge, no es aquella, ne de aquells mercaders, ne es obligada a aquella, ne es rao que u sia ne ho dega esser per alguna rao.[1] E axi per les raons desusdites, e encara per moltes altres no es tengut en lo get que fet sera en lo primer viatge, del nolit que haura del torn, per alguna rao. E per co fon fet aquest capitol desusdit, e per les raons en ell contengudes, no contrastant algunes raons en alguns altres capitols contengudes.

Capitol cclii. De patro e mariners, qui s'volran abstrer d'anar en lo viatge.

Si algun [2] senyor de nau o leny acordara o haura acordat mariners per anar en algun viatge, lo qual viatge sera ja entre ells declarat e certificat en lo dit acordament; los mariners son tenguts de anar e de seguir lo dit viatge, segons la forma en que seran estats acordats ab lo dit senyor de la nau o leny; si donchs los dits mariners abstraure no se n'poran per algunes raons o condicions, que son ja declarades en un capitol, on parla de les dites condicions, e aco desusdit deu esser menys de tot frau. E si per ventura, com lo dit senyor de la nau o leny haura acordat los dits mariners, ell se volra en persona abstrer de anar en lo dit viatge per sa autoritat, e no per alguna rao que ell escusarse puga, ni romandre dega del dit viatge, sino tan solament que es sa voluntat que romanga; si

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[1] *alguna rao*] Esp. 124 has after the word "rao" an additional sentence, viz.: "E encara per altra rao "no son tenguts, perco com nagun "no sap ne pot saber, ne es tan "sert que puscha saber, e a que li "ha esdevenir ne que no, que axi "poria esdevenir a alcun senyor "de nau o de leyn aytal cas de "ventura e encara pus fort, que no "li esdevench ne li era esdeven-"gut ab los dits mercaders, a qui "lo dit primer git sera esdeven-"gut."

[2] *Si algun*] Esp. 124, chapter cclix. begins here with the Rubric "Si algun senyor de nau o de leyn "acordera o aura acordats ma-"riners."

same, nor do they belong to the same merchants, nor are they responsible for the same; nor is it reasonable that they should or ought to be so on any grounds.[1] And accordingly for the reasons abovesaid, and likewise for many others, the managing owner is not liable to contribute to the jetison which has been made in the first voyage, on account of the freight which he shall have in the return voyage on any grounds. And for this reason this chapter was made, notwithstanding any reasons contained in any other chapters.[2]

Chapter cclii. Of the managing owner and of mariners who wish to withdraw from going on a voyage.

If any managing owner of a ship or vessel shall engage or has engaged mariners to go on any voyage, which voyage has been already declared between them and certified in the engagement, the mariners are bound to go and perform the said voyage according to the form in which they have engaged themselves to the managing owner of the ship or vessel; unless indeed the said mariners can withdraw themselves for any reasons or conditions, which are declared in a chapter[3] in which the said conditions are stated, and all as aforesaid ought to be done without any fraud. And if by chance, when the said managing owner of the ship or vessel has engaged the said mariners, he wishes personally to withdraw himself from going on the said voyage by his own authority, and not for any reasons which he may state, as an excuse for himself, why he should remain behind on that voyage, except only that it is his pleasure to remain

[1] *on any grounds*] The additional clause in MS. Espagnol 124 may be thus translated: "And further "for another reason they are not "responsible, inasmuch as no per- "son knows or can know, nor is "sufficiently certain that he can "know, whether it has happened "to him or not, that a similar case "of misfortune, or a still worse case "of misfortune than that which "has happened to him in company "with the said merchants to whom "the first jetison has happened, "may further happen to any ma- "naging owner of a ship or "vessel."

[2] *chapters*] The subject of jetison has been discussed in chapters l., li., liii., liv.

[3] *chapter*] The chapter here intended is probably chapter cxi.

lo dit viatge, on lo dit senyor haura nolieiada sa nau o leny e encara haura acordats los dits mariners, sera en loch perillos e de dubte, si lo dit senyor se abstraura de anar en lo dit viatge segons que desus es dit, aytambe se n'poden abstraure los dits mariners, si ells se volran. Mas empero, si lo dit senyor romandra o volra romandre per justa rao o escusa que haura, e feu ho entenent als dits mariners com los acorda, ell pot ben romandre, e los dits mariners no s'poden escusar, que no vagen en lo dit viatge per alguna rao, salvo per aquelles que desus son dites en lo dit capitol. Empero, si lo dit senyor roman o vol romandre o romanga ab justa rao o no justa, e los dits mariners iran en lo dit viatge e y volran anar, lo dit senyor los es tengut de donar e de metre home qui sia suficient de tenir lo seu loch, e encara que sia tengut e obligat als dits mariners de complir tot co, que entre lo dit senyor e los mariners fon empres com los acorda ; lo qual dit empreniment deu esser legit en presencia de aquell qui los dits mariners acorda, e en presencia dels dits mariners e encara d'aquell, qui per senyor en la dita nau o leny entrara. E en axi los dits mariners son tenguts de fer e de obeir tots los manaments, que justs sien, de aquell qui per senyor los sera mes e donat, tot en axi com faeren a aquell qui l's acorda. E si per ventura aquell, qui los dits mariners acorda e la donchs era senyor, dira e manara als dits mariners, " Yo coman a aytal la mia nau o lo meu leny, e ell " vos don e ell vos met per senyor, que vos altres

behind, if the said voyage for which the said managing owner has let his ship or vessel for freight, and likewise has engaged the said mariners, shall be to a perilous or doubtful place, if the said managing owner shall withdraw himself from going on the said voyage according to what is above stated, the mariners may equally withdraw themselves, if they wish to do so. But nevertheless, if the said managing owner shall remain behind and wishes to remain behind for a just reason or excuse which he may have, and it was so understood by the mariners when he engaged them, he may well remain behind, and the said mariners cannot excuse themselves from going the said voyage on any grounds, saving for the reasons which have been above stated in that chapter. Nevertheless, if the said managing owner remains behind, or wishes to remain behind, or has remained behind, for just reasons or without them, and the said mariners shall go on the said voyage, or are willing to go on it, the said managing owner is bound to give to them and to place on board a man who is sufficient to fill his place, and further, who shall be bound and responsible to the said mariners to perform all that has been agreed upon between the said managing owner and the mariners, when he engaged them: which engagement ought to be read in the presence of him who engaged the said mariners, and in the presence of the said mariners, and likewise of him who will enter in the master's place on board the said ship or vessel. And accordingly the said mariners will be bound to do and to obey all the directions, which shall be just, of him who shall have been set over them in the place of the managing owner, precisely as they would have done towards him to whom they engaged themselves. And if by chance he, who engaged the said mariners and was then managing owner, shall say and give orders to the said mariners, "I com-
" mit to such a one my ship or my vessel, and give him
" to you and place him over you as manager; let all of

" facan axi per ell com eran tenguts a mi, si en lo " dit viatge anas." Si ell dira les paraules desusdites als dits mariners sens algun reteniment que ell no y fara, lo dit senyor, qui los dits mariners ha acordat, s'es desexit dels dits mariners, e los mariners d'ell e de tota obligacio e convinenca que ab ell haguessen, si los dits mariners compliran e attendran tot co que ab ell hauran empres per lo dit viatge a aquell, qui ell los haura dat e mes per senyor. Mas empero, si los dits mariners no attendran a aquell qui per senyor los sera mes e donat les convinences o empressions, que ab aquell qui l's acorda havien promeses e empreses per lo dit viatge, aquell los ne pot demanar e fer demanda tota hora que ell se volra. E si per ventura los dits mariners attendran o hauran attes e complit tot co que en convinenca sera empres a aquell qui per senyor los sera mes e donat en dit viatge, e estant en la dita nau o leny aquell, qui per senyor los sera dat, fara ab los dits mariners algun contracte per cambiament de viatge o per altre alguna manera; si per lo contracte novell que los dits mariners hauran fet ab aquell, a qui la dita nau o leny sera stat comanat e encara per senyor los sera stat mes e donat, se moura entre ell e los dits mariners alguna questio o demanda per rao del contracte novell entre ells fet; si aquell, qui de la senyoria de la dita nau o leny se despossei e hi mes aquell, ab qui lo contracte novell sera stat fet, e l'mete en possessio, e encara se desexi dels dits mariners e l's mes per senyor aquell ab lo qual lo dit contracte fon fet; si ell moura questio o demanda contra los dits mariners per rao del dit novell contracte en nom seu

" you do to him as you were bound to do to me, if I had " gone on the said voyage." If he shall say the above words to all the mariners without any reservation that he will not do so, the said managing owner, who has engaged the said mariners, is released from the said mariners, and the said mariners are released from him and from all obligation and contract which they may have had with him, if the said mariners perform and fulfil all that which they have undertaken to do for the said voyage towards him, whom he has given to them and put over them as manager. But nevertheless, if the said mariners do not fulfil towards him, who has been put over them as manager, the contracts and agreements which they had promised and agreed to for the said voyage with him who engaged them, he may demand the performance of them at any hour which he may choose. And if by chance the said mariners shall perform or have fulfilled and completed all that which has been agreed to in the contract towards him, who has been set over them as manager on that voyage, and he who has been so set over them, whilst he is on board the said ship or vessel, shall make any contract with the said mariners for a change of voyage or for any other cause, if through the new contract which the said mariners have made with him to whose charge the said ship or vessel has been committed, and who likewise has been set over them as manager, any question or claim should be moved between him and the said mariners by reason of the new contract made between them ; if he who has dispossessed himself of the management of the said ship or vessel, and has placed in possession of it him with whom the new contract has been made and entered into, and has further released himself from the said mariners, and has placed over them as manager him with whom the said contract has been made, if he shall move the question and make a claim against the said mariners by reason of the new contract in his own name, he cannot and ought

propri, no ho deu ne pot fer per alguna justa rao, ne l's dits mariners no li son tenguts de respondre, ne algun hom ne jutge no l's ne pot forcar segons les raons en lo capitol declarades. Mas empero, si aquell a qui ell haura comanada la sua nau o son leny li dara o li haura donat son loch, ell pot fer la dita questio e demanda en loch e en nom de aquell, mas en nom seu propri no pas. E axi, si ell fara axi com desus es dit, los dits mariners li son tenguts de respondre e en altra manera no. Mas empero, si aquell, a qui la dita nau o leny sera comanat, fara o haura fet alguna cosa que sia o dega esser a dan de la dita nau o leny, per alguna manera que justa rao no sia, aquell, qui la dita nau o leny li haura comanat, li n'pot fer demanda, de la qual cosa no cal altre dir ne recapitular, perco car quascu es tan cert, que sab que s'ha a fer del seu meteix, e que no. E per la rao damunt dita e declarada fon fet aquest capitol.[1]

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[1] *capitol*] Espagnol 124, chapter cclvi. concludes here on the back of fol. 147 with the clause "E per les "raons desusdits ffon feyt aquest "capitol." After which follows the colophon "Ffinit es lo libre e "acabat, gloria e laor sia dada a "Jesu Christ, Amen."

not to do so on any just grounds, nor are the said mariners bound to answer him, nor is any man or judge able to force them, according to the reasons declared in the said chapter. But nevertheless, if he to whom he has committed his own ship or vessel shall resign or has resigned to him his place, he may move the said question and claim in the place and in the name of him, but not in his own name. And accordingly, if he shall do as above set forth, the said mariners are bound to answer him, and not in any other manner. But nevertheless, if he to whom the said ship or vessel has been committed, shall do or has done anything which may be or ought to be detrimental to the said ship or vessel in any manner, for which no just reasons can be alleged, he who has committed to him the said ship or vessel may bring a claim against him: on which subject it is not worth while to descant or to recapitulate, because every person is sufficiently informed as to know, what he ought to do of himself, and what not. And for the reasons above said and declared this chapter was made.

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LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.
[.—750.—11/74.]

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